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PREFACE

The following lectures in the Dodge Course at Yale University upon the Responsibilities of Citizenship deal chiefly with a certain aspect of the general subject which appears to me at the present time to possess great importance. With a digression here and there upon some other branch of the central theme established by the donor for the course, what I have said relates principally to the encroachments of the law upon the liberty of the individual and the necessity of maintaining the largest attainable measure of freedom. It seems to me that the substance of my lectures may be fairly well indicated by the title I have adopted, "The Liberty of Citizenship."

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THE LIBERTY OF CITIZENSHIP

CHAPTER I

Nature of Citizenship—Its Methods of Expression—Over-Government as an Enemy to Liberty

After the notable discourses that have been given by the eminent men who have spoken in the Dodge course before this University it would put a severe strain upon one's power of invention to attempt to say anything novel and at the same time true about the duties of citizenship. The discussion of the subject has been carried almost to the point of exhaustion. The courses the citizen may follow with safety have been carefully mapped out and the rocks and reefs fully charted. If one may employ a phrase sanctioned by centuries of use in the New England prayer meeting, our civic sins of omission and commission have all been chronicled in their due order. We have seen mighty lances jousting upon constitutional fields and the structure of our government and the way in which it should exercise its powers have been clearly delineated.

But one to whom it falls to speak upon a theme

upon which so little remains unspoken may have some of the temporary advantage of an open field. It is possible that few of you have read the ten or more volumes that contain these lectures. Disraeli makes a character in one of his novels pronounce a glowing eulogy upon the English nobility, saying of them that "on the whole they most resemble the old Hellenic race, excelling in athletic sports, speaking no other language than their own and never reading." This comparison would apply not inaptly I suspect to considerable groups of students in some of our American universities. But I trust you will not think me so base a flatterer as to compare you to the old Hellenic race and to the English nobility at one and the same time. Your excellence in athletic sports perhaps you will reluctantly concede. Your exclusive devotion to your own tongue you will repudiate, and as to your never reading, you would probably be willing to stand upon the statement that you do not read everything. I may therefore safely assume that some of the contents of the illuminating volumes containing the Dodge lectures have escaped your attention or have been forgotten, and that you will not be fully conscious of the change to simple fare from the ambrosial diet to which you or your predecessors have been accustomed. The subject is vital in its impor-

tance. It is broad and is constantly broadening, and it may be that a treatment from a new point of view, even if it shall shed no new light, will serve to put an emphasis upon some old truths with which you have long been familiar.

What is the central idea of citizenship? I have a notion that it is one of relation to others. No one can be a citizen all by himself. Robinson Crusoe may have been a sovereign, but a citizen he could not be. The conflicts between labor and capital that rent his little state were only such as swept across his own breast. Most envied of mortals, he could placidly monopolize any part of the trade and commerce upon his island without fear of being proceeded against under any Sherman anti-trust law. He could follow his ancient habit of taking nine hours' sleep each night and not be stigmatized as a reactionary. Happy old citizen of the universe, hero of so many generations of youngsters of all ages, you and your mythical island have become objects of admiration and envy to old boys as well as young whose elbow room in this world is being painfully hedged in.

We can draw some lesson for ourselves from the career of any character, genuine or fancied, and since I have used the name of so very real a character as Robinson Crusoe, I shall not let him quit our sight without looking for the lesson.

Since we cannot each one of us have his island, let us try to preserve for ourselves some measure of freedom upon the continent to which we have been consigned, and let us regard it as one of the first duties of citizenship to aid in checking the rapidity and greed with which the laws are coming to devour liberty. If some of us do not approve of freedom for ourselves, let us, as good citizens, have regard for our neighbors and not look upon liberty as an evil. But I am penetrating into my theme, I fear, with an unpardonable haste. I shall hereafter recur to the subject of over-government, of which we have just now taken a glimpse, and shall speak to you more at length of the waste of human energy and of the contempt, even of law itself, that follow a multiplicity of statutory restraints.

It will be well to start with some comprehension of what the State is, the nature of our citizenship in America, and the practical way in which the citizen may express himself in government. I shall also suggest what I think should be his general attitude towards the scope of legislation. We shall thus be able to see more clearly some of the important conditions of our problem and also our duties with regard to it.

The nature and origin of the State have been the subjects of much metaphysical speculation.

I cannot hope to deal with such an abstract subject in a way to pass muster with the philosophers, and therefore I shall not attempt it. Indeed the philosophers differ widely among themselves and each of them is pretty apt to have a theory of his own. It may be interesting, but I think it is not highly profitable for our present purpose, to consider whether one of them is right when he founds government upon the cowardice and fear of primitive men, or whether another is right when he holds that the natural state of man was a state of war and that men joined together to keep from fighting each other or at least to keep from fighting as individuals rather than in groups. It is not without significance, however, that each of these opposite views implies the social contract which would enthrone at the basis of society the right of self-government rather than the divine right of kings. But it is important that as far back as it is permitted us to look over the troubled and distant seas of the past, over which the race has painfully found its way, we see evidence of union and government among men. Out of my direct line, I may also say that while we see groups of men fighting against each other and in the first instance very small groups, the battling units on the whole have increased in size, and this circumstance gives

ground for the hope that there shall ultimately be evolved a group so large that international war shall cease altogether.

What is the fair scope of the nation as expressed in government? Some writers have elevated it into a species of deity, for the benefit of which men exist. I take it that the State is an institution evolved from human experience and designed for human ends. According to my view it is its main object to do those things which are essential to the protection and development of the individual and which in his isolation he cannot do for himself. The effect upon the individual is the real test of the beneficence of government. If the condition of men generally were worse with government than without it, then that institution should be swept away as a thing of evil. It is an instrumentality and not an end, and it is its primary function to elevate men and not to keep them down in slavish submission to an abstraction with no consciousness of its own.

It took many centuries of groping before the individual was discovered as an institution. In the ancient republics the State was the ultimate thing and the individual existed for it alone. And until the very modern era the little that came to him except toil came not by right but by grace of government which was the gigantic perquisite

of those who controlled it. It is, I think, not extravagant to say that the individual did not completely arrive until the establishment of the American Commonwealth with its immortal Declaration that governments derive their just powers from the consent of the governed and that they were founded to secure certain great human rights. It may be suspected, and I think with a good deal of truth, that primitive man had within him a certain instinct for order which even the lower animals and the birds do not appear to be without, and just as the physical laws of nature evolved order out of what appeared to be the chaos of mists and waters, so the spiritual laws implanted in the bosom of man were the seeds from which government was to spring. If that be true, government should proceed with great caution in nullifying the work of nature and in substituting the standards of human enactment for those natural laws upon which the State reposes and which brought it into being.

But to leave anything which may resemble abstract philosophy upon the origin and nature of the State to those who have a taste and fitness for it, it is sufficient for our purpose to take our system as it is, and, so far as the past is valuable to throw light upon the present, to use for our guidance only the known facts of history.

I have said that the central idea of citizenship is one of relation. But the relationship involved is not primarily that of one man toward another. The terms good citizen and good man come near to being synonymous with each other; and a universal readiness to do unto one's neighbor as one would have his neighbor do unto him would accomplish more in the direction of making a just and beneficent state than all the constitutions and systems of government that were ever devised. But I fancy that the central idea of this course has reference primarily to those duties that we owe each other, not directly as between man and man, but through the State, and which are discharged through the action we seek to have taken through its instrumentality. They concern the part we should take in the direction of our governmental institutions, the inspiration and control of which devolve upon ourselves. We are to treat of man as a political animal, as Aristotle called him, rather than more broadly as a social being.

There is a well-founded distinction between the terms which stand for a man's relation to the State in a kingdom and in a modern republic. In the old-fashioned monarchy, some types of which still linger upon the earth, the king was the vicegerent or partner of the Almighty, and as the Infinite Being was not visibly present except

to the inner eye, the king sometimes recognized no division of power, but graciously permitted himself to patronize his partner with language more or less smooth and to exercise the authority of both. The man in a monarchy is called a subject, a term which implies nothing else than something to be governed, with no hint that he is to bear any part in the process. The one duty of the subject is to obey and to illustrate in his own person the virtues of meekness and of complete submission to the will of another. The term citizen, however, implies no notion of inferiority towards anybody. As a member of the body politic he is the equal of every other man. He should of course obey the laws, but they are laws in the enactment of which it is his right to have an equal voice. In some of the modern monarchies the subject is indeed an active part of the political mechanism and does have a share in the direction of government. But such monarchies are near-republics, and this fact should be recognized by doing away with a barbarous nomenclature which is antagonistic to it and which it does no honor to human nature to perpetuate.

In our country a man's relation to government is expressed with no ambiguity by the term citizen. He is an equal partner in the work of governing. He stands upon the same level as

those about him and the State is what he and his fellows make it.

The thing about our system that we most like to emphasize is that it is a democracy. Perhaps it would be more nearly correct to call it a democratic republic. But if we do not strive too strongly to be exact, the characterization of democracy will apply to us very well. It is true that there are among us some very good people who would question the strict accuracy of applying the term to a community where the political class was limited to members of the male sex. They would contend that such a system should more properly be styled an anthropocracy than a democracy. But we are approaching dangerous ground, where we must tread softly, if indeed we tread at all.

Speaking then after the manner of men for centuries, and perhaps not quite abreast with the exactitude of the present moment, we are a democracy. Our system generally contemplates a government based upon the will of the men of mature age who have the right to participate equally in the direction of our public affairs. We thus have political equality, and political equality is a very great thing in itself. It needs no argument to justify it. When we read of some of the systems that have existed upon this earth of ours

in the not remote past where the nation was divided into many orders, with those below drudging for those above and having less hope of rising to the surface than was enjoyed by a Roman slave, and compare those systems with our own, we shall admit, I think, that the evils of democracy are as nothing compared with its benefits. That a man, however lowly his birth or however humble his circumstances, should be a member of a State, even of the second rank, the political equal of his fellow men and the inferior of none, has a stimulating effect upon the spirit. It incites one to stand erect upon his feet in the simple majesty of his manhood. But to be an equal citizen of a great nation like ours makes a stirring appeal to his pride and elevates him to a place of dignity to which the Roman citizen was raised by the eloquence of Cicero in his speech against Verres. "Men of neither wealth nor rank, of humble birth and station sail the seas. They touch at some spot they never saw before where they are unknown and no one can vouch for them. But in the single fact of their citizenship they feel they shall be safe."

It must be admitted, however, that this particular sort of elevation exists rather in the imagination than in fact, so far as concerns the practical advantage of American citizenship to

a man finding himself in difficulty upon a foreign shore. But the imagination sees what might be made more of a reality without encouraging any bombastic assertion of the rights of an American citizen under a foreign jurisdiction.

But is the relationship of the citizen to the State simply that of an owner or is it that of a trustee? Is this priceless franchise held by each man only as a private possession for the benefit of himself or is it held and should the relationship be exercised for the benefit of all? I know our party appeals are often made upon the basis of interest, to classes and to large groups of voters, and the good of individuals is often put above the good of the State. A common way of stating it is, that the general interest is the sum of the personal interest of each individual expressed as he sees it. I grant that the general interest, what is the best for all, is the paramount thing to be considered, but it may be gravely questioned whether this is arrived at by adding the interest of each individual. The individual has no right to vote for what appears to be his own private interest if it also appears to be against the good of the State. His vote should be an expression of his judgment rather than his interest, and it should be his aim to express his sense of the common interest. It would not elevate the

franchise but rather degrade it to the level of a mere chattel, to treat it as something primarily to be exercised for one's own financial good. It is no very lofty idea of patriotism that men enlist and fight for their country for narrow individual benefits to themselves. They risk their lives for their country and her preservation. And if a man should be willing to die for his country he certainly should be willing to vote for her in time of peace. Undoubtedly self-interest will sufficiently creep in when we come to exercise the suffrage, however high our ideals may be. We are prone to confound our own interest with the public good and self is not apt to be neglected. But we shall have a nearer approach to our ideal system if the citizen shall employ the best thought he is able to bring to bear, reach such principles of government as seem to him most likely to promote the general welfare, and then vote for the candidates who most nearly represent them.

The rights of citizenship impose corresponding duties and the operation of these duties is constant. I have referred to voting. It is very trite as well as very true to say that the duty of voting is of prime importance. The neglect to perform it falls little short of an abdication of citizenship. The Plymouth Pilgrims were wise in their day and generation and they fined men

for not voting. But voting by no means fills the measure of our duty. Indeed there is one thing worse than not to vote at all, and that is to cast an ignorant vote. Just as the quack doctor may lay the foundation of new diseases instead of curing his patient, so the vote of the man who gives no study or thought to public questions but who votes with the noisiest party or the biggest headlines in the newspapers becomes a menace to the State. By the ignorant vote I surely do not mean the vote of the man who is unlearned in the things that are taught in the schools. He is oftentimes the wisest and safest voter we have. The means of informing ourselves are all about us if we pass through life with open eyes. If one observes conditions, looks beneath the surface, reflects upon what he sees, does not permit himself to be blinded by partisanship and keeps burning in his heart the fire of a sincere love for his country, he is fitted to perform ideally the duty of voting. Such a preparation as that does not require the training of the college, but is within the reach of men in every rank of life. Indeed of the two men who by the common consent of mankind stand as our greatest citizens, Washington had very little training in the schools, while Lincoln if possible had less.

The besetting sin with men highly educated in

the schools as well as with those of a wide range of private affairs is ofttimes political indifference. They permit themselves to be wholly absorbed in their studies, their amusements or their business, and give little attention to public affairs, reserving the right, however, to complain if things go badly, and discharging their duty to the State by exclaiming upon the wickedness of the politicians. No private pursuit need suffer, no passion for art or letters or science be abated in the least by a due study of the affairs of the nation and of the questions that concern the government of the states and municipalities in which we live. The broadening effect, the cultural value of the study of public questions will increase one's stature as a man and augment even his efficiency in his own private pursuits.

But with so many millions of citizens in our country, how can a union of the majority be secured, how is opinion to be formulated and to gain sufficient force to secure expression in law? This question brings us to the initial practical step in government. Parties have thus far been found necessary in the government of countries having the parliamentary system. Whether they represent only an incident in the evolution of government or are permanent forces cannot clearly be seen, but experience has shown the constant

tendency under free institutions for masses of men who have to deal with the same subjects to divide up into groups. There has rarely been a policy of government that has seemed too clear for different interpretations.

We are apt to associate the formation of a party with the meeting together of a few men who formulate and publish to the world a platform of principles. If the platform proves sufficiently attractive, other men flock to the standard and sooner or later an army is collected together which attains to the dignity of a party. If the idea at the basis of the movement proves to be a popular one the party may become an established affair or its idea may be appropriated by an existing party and added to its program. If it is sound and fundamental but not at the moment attractive, there is formed the semblance of a party made up of men of conscience who sometimes for many years stoutly keep up an agitation until at last a powerful popular opinion is created which must be reckoned with, and which finally expresses itself in law either through the instrumentality of the new party or of an old one. So great is the importance of political agitation and of a union among men to support it that our system gives the utmost freedom in the taking of the first steps to form parties.

But parties are more often the result of an evolution and are not commonly formed, as the American Constitution was formed, by men getting together and passing some sort of ordinances. We inaugurated our government without parties, but they sprang up inevitably out of the practical application of principles in government. And the parties formed in our early days have, under changing names, fairly well maintained their identity, although the modern Republican party was a new formation which swallowed its predecessor, the Whig party. Formidable agitations may spring up, but they do not commonly eventuate in established parties and in both Great Britain and the United States the work of governing is rarely done by any other than by one of the traditional parties.

The human mind is not infallible and when one who is charged with responsibility in government reaches a conclusion and acts upon it, there is commonly something else he might have decided to do which may have been the wiser thing.

Action generates criticism, and thus we have naturally, and necessarily perhaps, under a free system the government and the opposition. Since criticism is not agreeable, under a despotic system it is suppressed and you have only action, and action, unless it is called to account, may become

very extreme. But it seems inevitable under a free government that there should be parties growing out of the forces of attraction and repulsion which show themselves when any practical step is taken in government.

It is one of the singular things about parties that a great mass of men are apt to divide so often into such nearly equal groups. One would think that one or the other of opposite theories of government would receive more general acceptance. When support of a controverted party question is very strong, a reaction sooner or later is apt to set in to be followed by an equally strong support for the opposite theory. The truth seems to lie between the two extremes, or indeed it seems to have a wandering home. If it were at a fixed and exact point, midway between opposite contentions, then since the pendulum does not stop over the middle line, it might be inferred that the truth only for a brief instant would ever be put in force. The terms progressive and reactionary often indicate the ebbing and flowing of the tide, or if one may multiply his metaphors, the opposite movements of the pendulum. When there is an apparent reversal in the direction in which the State is moving, those who seek for epithets with which to depreciate their antagonists or for ornate adjectives with which to decorate them-

selves may sometimes contend on equal terms for the possession of either of these designations which they may at the moment prefer.

But progress is not to be confused with mere motion and change of position. The swinging of the pendulum either way by no means always indicates progress. We push our governmental orb on toward the northeastern corner of the universe perhaps, and call it progress so long as we keep it moving, when the truth may really lie in the centre and to the extent that we are moving away from it we are certainly not making progress. We seem to be drawn towards the centre by a natural law, the attraction towards which increases as we move from it until the tension becomes so great as to stop the outward motion and we swing back irresistibly and reach the further limit on the opposite side. The force that resists the outward movement and finally checks it may be called the opposition, and when it assumes control it becomes the government, and that which had just been the government becomes the resisting force and hence the opposition. We should achieve progress no more than does a pendulum if we always moved backward and forward upon the same plane. We attain real progress, however, because the successive actions and reactions are upon different planes and by

no means always return us to the same point. They constantly take something from each other and with the play to and fro there is in the long reaches of time a forward movement, although sometimes doubtless this forward movement is only visible to the eye of faith. It is often said, and I think truly, that we attain progress upon the line of a spiral, and that even though superficially moving in different directions we may be gaining.

A great mass of human error will be found upon both sides in the ebb and flow of political theory, and occasionally there will be witnessed in the management of parties some great blunder or some stroke of genius which will make the process more irregular, genius prolonging its power and shortening its period of opposition, and the blunder having the opposite effect upon the fortunes of those who made it. This backward and forward movement is also accompanied by a vast deal of noise and passion, a slight part of which may be useful, but the much greater part of no value. It might be harmful and produce perturbations which would derange the results of the intellectual forces, but the noise upon the one side is apt to balance and neutralize that upon the other. It is sometimes assumed that the balance of power is held by the wise men who are detached from

partisanship and who, like Olympian beings, hover over parties and descend upon the one side or the other as it may seem the more worthy. Unfortunately Olympian beings are gifted with passions and prejudices as men are—*animis coelestibus irae*—and sometimes they descend upon the unworthy side. Sometimes, too, the real balance of power may be exercised by the least intelligent, for whose votes one or the other of the great parties is willing to bid by some special enactment, possibly at the expense of the general good.

Except upon a rare issue, such as was seen in the division over slavery, the differences between parties are likely to be political as distinguished from moral differences. Each will indeed draw a very wicked looking picture of its antagonist, but upon being entrusted with power it is likely to do the very thing it denounced in its adversaries and to do it more abundantly. The differences commonly are economic or relate to administration, and such as they are they are sometimes rhetorical rather than real.

Mr. Reed once said that "politics is mostly pill-taking." He probably meant that while one's party is in his opinion better on the whole than the other party, there are a good many things about it that it is difficult to swallow, and that

for the sake of union upon the few important matters we must give and take upon the lesser issues. But from the nature of the political differences today the voter is not justified in swallowing a distressing amount in order to vote with his party. It is of the first importance to have men in public office who are honest and free from demagoguery, and if your party nominates a candidate who is neither and the other party selects a good man, the duty to vote independently is very clear. We have had too many men in our legislatures and sometimes even in higher offices, who have not been above feathering their own nests and who have brought reproach upon representative government. It is the prime duty of the citizen to be upon the lookout for such creatures and to smite them whenever their names appear upon a ballot under whatever party designation. Parties may not always be able to offer to the voters a great statesman, but they should have no difficulty in selecting an honest man.

Since parties under present conditions are necessary, the law should encourage their formation and development, as restriction would tend to strangle public opinion in the making. They should of course have their organizations, but the law should aim to secure to their members the

most complete equality in party management and the party should control the organization and not the organization the party. But it need hardly be said that the members of one party should not be permitted to control the affairs of another party, a thing which is now permitted and indeed encouraged under the laws of some of the states. If we are to have parties, they should be conducted upon the democratic principle, with the right of self-government in the members as to the things which pertain to the party's affairs. But there would seem to be no self-government about a system which would permit the candidates, delegates and managers of one party to be chosen by the members of another. It is not easy to see upon what other principle such laws are framed than upon hostility to the idea of the party system.

Beginning therefore with a universal right of suffrage among men and the fundamental duty growing out of this right of exercising it as intelligently as we are capable of doing and for the public weal, and with a mechanism of parties which are a species of little republics inside of a great one, and without the slightest excuse for being except as they are completely subordinate to it and conducted for its welfare, the citizen of today finds himself a part of an established system,

which may or may not be permanent, but which at least exists. Government is indeed a mighty engine and each one of us as much as any other has his hand upon the throttle. It depends upon us today whether it shall be an institution under which men may expand and move forward and under which may thrive all the multiform arts that make up the chief part of what is called civilization, or whether it shall be, as it has so often been, a Moloch oppressing men, binding them with fetters, causing them to shrivel up, and become pigmies, and robbing life of its pleasures. The general view which the citizen takes of the proper functions of government and of his relations to it is of more consequence, I think, to good government than all the formulæ for right action upon particular problems contained in the catalogue of his specific duties.

What should be the nature of his general view?

It is important, first of all, that he should not confuse democracy with liberty. Undoubtedly liberty followed democracy and is indeed its choicest offspring. But just as Saturn devoured his children, so a democratic government may show itself the deadly enemy of real freedom. Freedom I believe to be the wider term and inclusive of democracy. Liberty in its broadest and highest sense cannot exist without democracy,

but there may be democracy without liberty. Indeed I think the great problem of our system is to fix the bounds between law and liberty and to have our democracy respect them.

The two chief fields of municipal law are those which relate to persons and to property. This common general division is sufficient for our purpose, although it should be observed that strictly there is no such thing as property except as related to persons, and that setting a property right against a human right involves a jugglery of terms which has done a good deal of service in misleading people. We sometimes hear the question asked, What is a property right, compared with a human right? The answer is a very simple one. Property as such has no right whatever. A property right is nothing else than a human right. A man, for instance, has a right to labor that is very human. But has he not also a right to his wage and is not that human also? Is the latter to be depreciated by calling it a right of property as distinguished from a right of humanity? The wage is the incentive to labor. Nobody works for the mere pleasure of working unless it be a certain school of politicians, and their work is done chiefly with the organs of speech. An accumulation of wages means a home for the worker and his family and a provision for

sickness or old age. Humanity can be little exalted by a slur upon one of the primary human rights—the right of a man to enjoy the product of his toil. We may indeed admit that too much thinking of comfort or even of life itself, and certainly too much thinking of riches, and forgetting the higher things that make life more worthy of being lived are very great evils. I imagine the greater number of us would be willing never to think of such a thing as property if it were not necessary to do so. If we could have food and clothing, a comfortable home and the other necessaries of life, books and the theatre, music and travel, without thinking of property, such a degrading concept as the dollar would never cross our minds. We should speak about it with a due contempt on every suitable occasion. But fortunately or unfortunately toil and struggle are made the price of existence, and the price of existence they are likely to remain until there shall be a repeal of the decree of banishment from Eden with its sentence to hard labor, which has been so greatly responsible for the progress of the race.

What, then, should be the attitude we should take toward the laws we are to help enact with regard to persons and property? I will speak first of the laws relating to persons, or more

definitely, perhaps, to conduct. It is in this field that we see in a very marked manner the tendency toward over-legislation, and it is a field where over-legislation is very much out of place. If it be said that property is an artificial creation of the law and therefore subject to regulation in all things, I imagine it will be admitted that man is a natural product and that the State when it deals with him deals with something it did not create. There are at least two schools upon the question of the degree in which the State should regulate the conduct of individuals. The school of freedom is perhaps best represented by Mill, who declared that the only ground upon which mankind could interfere "with the liberty of action of any of their number is self-protection—the only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself his independence is of right absolute over himself. Over his own body and mind, the individual is sovereign." The position of Mill has been supported by many strong arguments and among them that the standards of a State about right and wrong as expressed in a legislature are by no means infallible; that it weakens character to take away the necessity of self-restraint and that to have the conduct of mature and sane men

supervised by government in the paternal fashion in which parents govern their children would rob them of the strong and self-reliant qualities of manhood.

Lecky well sums up these arguments in the statement that "the real cure for the vices of society must go to their roots and is to be found in moral and intellectual changes affecting habits, interests and tastes which the hand of power can never produce."

Protection was the only function of government as Mill saw it and protection in its practical application is being constantly amplified. It is a term capable of almost indefinite expansion. It aims to shield men not merely against violence, but against disease. It has come to include not only the national defence and the maintenance of courts, police and the other instrumentalities of internal order, but education in all its fields, the inspection of everything that men eat and drink, the acquirement of parks and playgrounds, and its application has been expanded in many ways in order to keep abreast with the new conditions that our restless civilization is constantly bringing forward.

The other school would have the State interfere in all the minute details of conduct and would interpose statutory standards with little regard

to those which were created by nature. They would regulate a man's conduct not merely in public and in so far as other persons were directly concerned, but even in his own home, would prescribe what he should eat and drink, what he should read, and would prohibit the doing of anything which in the opinion of the legislators was wrong in itself without regard to its effect upon the public. It would treat man as a child and by making him dependent for guidance in all things upon the State, it would effectually make him a child, run in the mould of the legislature. If the State may regulate individual conduct except for purposes of self-protection it has an equal warrant to regulate opinion and belief. Indeed it has time and again attempted to regulate belief and its enterprises in that direction have produced the most lamentable consequences. The most of us, I think, would rather take our chances with the faculties nature gave us than to be made over again in the image of a modern legislature. We would rather be natural products than legislative monstrosities. When we stand in the image of God we are a reasonably constant quantity, but when we become legislative creatures we cannot keep an account of ourselves, but are without stability, and our style is likely to change each year when the wise men assemble to pass new

laws at the State capitals or at Washington. Given a wave of hysteria and an enterprising statesman, and we have many such, ready to coin it into votes, and we are straightway either endowed by law with a new faculty or are truncated and deprived of the use of an old one.

What I have said involves a view of the subject after a somewhat ideal fashion, as if legislation always had its intended effect and entered into the lives of the people. But legislative enactments are becoming so multitudinous that even the lawyers by no means know them all and the average citizen knows very little about them. They are repeatedly ignored or violated and this circumstance tends to breed a contempt for law which extends even to salutary and fundamental laws. Thus men instead of being made better by legislation are made worse by its abuse. As an incident to the general ignorance of what the laws are, unscrupulous people for the sake of profit embark in a nefarious enterprise, and blackmail threatens to become an important industry. In order to have our statutes respected and obeyed, the legislative energy should be confined to the passage of necessary and wholesome laws, and we should keep out of our penal code the adventurous schemes of well-meaning but impractical people who are impatient of the slow movement of

civilization, and who would construct statutory bridges to carry us immediately to the millenium.

Those who confuse liberty with democracy are prone to decide that whatever fetters democracy may fasten upon man he still remains free. But freedom to man in society consists in his right to use his faculties and to profit by their use, subject to the equal right of other men to do likewise, and it is the important function of the State to restrain only such exercise of his faculties by man as may injure others. With this qualification freedom should be safeguarded not merely because it is a right of the individual man, but because its enjoyment by developing enterprise has been the great agency in pushing forward civilization. And men should be permitted to build up their characters in the only way in which strong and robust characters can be built, not in the stifling hothouse of governmental restraint but in the free and open fields played upon by the sunshine and beaten by winds and storms.

CHAPTER II

Influence of Private Enterprise upon Progress. Some Suggestions upon Government Ownership

In treating of legislation relating to property, we enter the domain of artificial as distinguished from natural right. As the faculties of the individual antedated the State, the right of the latter to interfere with their use could only stand upon the theory of conquest or surrender. But the rights of property are commonly believed to flow from the State; and the complete jurisdiction of the State, except where limited by its own constitution, to define and regulate them, is very generally conceded. The right of property when established is, as I have said, nothing else than a human right. I imagine you would not accept the extreme position taken by Rousseau, who having in his early years taken an attitude very antagonistic to the institution of property, declared in his later life that the right of property was "the most sacred of all the rights of citizens." And yet the right of property is of fundamental

importance in our civilization, both on account of what its right use can bring to men and on account of what the necessity of its acquirement will lead them to achieve. But important as it is, we must be careful not to give our approval to the false scale of values which is too often derived from it and set up as a standard with which men are to be judged. It is between ages as it is between individuals. There is no presumption that the richest generation any more than the richest man excels in virtue or culture or indeed in anything else except wealth. The high points of civilization are not attained in those ages which flower out in the production of vast fortunes or, if they are attained, it is because of other things. The glories of Raphael's age or of the ages which gave the world the speaking marbles of the Vatican, or the plays of Shakespeare or Paradise Lost would throw into the deep shadow an era distinguished only by ironmasters and oil kings and packers with all its porky splendors. However, since even painters and poets like the rest of us must have food and clothing and a roof to shelter them, there must be property, and it is difficult for us to imagine anything like a state of civilization among men where the right of property does not exist. The time may come when the hard facts of existence

shall not drive men, and when everybody, if such a thing as work shall then exist, will work for all and nobody will work for himself. But society seems hitherto to have made no rapid advance in that direction. When man contended for his existence on even terms with nature, his wants were few, chiefly because to supply a few wants exhausted his power of production. But through invention and discovery he gained an advantage over nature and she no longer contended with him upon equal terms. He then began to produce more than sufficed to supply his few primitive wants, and as the range of his power extended, his wants were multiplied also. Civilization came forward. The progress during many centuries was indeed slow, but in proportion as opportunity was increased and the field for enterprise enlarged, the forward movement became more rapid. What man acquired, while it might satisfy any definite wants of the moment, failed to satisfy his aspirations. He did not rest content with what appeared to be his natural element, the land, but he ventured out upon the rivers and seas—first upon rude rafts or boats, then upon ships propelled by oars. Later the winds were harnessed in to do the work, and afterwards he went out against tides and winds in ships driven by steam. Then he attacked a new element and came to

course through the air like a mighty bird. Such progress is only typical of what has been achieved in many fields through the ferment of human energy.

New things have been discovered and the knowledge has been applied in arts, largely from the desire of man to better his condition, and as the field of opportunity has been broadened and he has been made more secure in the enjoyment of the results of his doing, his achievements in number and importance have been increased. He has been enabled to take his long forward strides largely through a commercial and industrial organization of society—an organization not primarily worked out by law, but resulting from the natural division of the work of production and the general freedom of the individual to select the part best adapted to his powers. The Greeks knew, and probably it was known long before the day of the Greeks, that as Plato puts it, "all things will be produced in superior quantity and quality and with greater ease when each man works at a single occupation in accordance with his natural gifts and at the right moment, without meddling with anything else." This division of labor made necessary a medium of exchange and it made necessary also transportation, commerce and trade, so that men and cities in the same country

or in different countries might exchange their products with each other. Thus was developed the commercial organization of society, so intimately related to man's efficiency, to his prosperity and even under the new conditions to his very existence.

People with vague notions, who are animated by a purpose, most commendable in itself, to do away with admitted evils, propose somehow or other, by taking away the spur of necessity pressing upon each individual, to construct a State where all without regard to their merit or industry shall be equally well off. They may measurably equalize opportunities, which is an admirable thing, but they cannot equalize conditions unless they shall equalize capacity also. And since they cannot make the slow runner as fast as the swift one, they must handicap and hamper the swift runner so that the slowest may outstrip him. They can do this by imposing weights and handicaps, but in what way are they to equalize the ingenious with the dull and the industrious with those who have an invincible repugnance to labor? The application of such theories, it need scarcely be said, would fail to conserve and utilize the most efficient portion of the human race to the great detriment of civilization. By removing the spur of necessity from the individual and taking

away from him the natural incentive to struggle to better his own condition, we shall not merely check progress, but we shall even run the risk of resolving society into its original elements and of losing those things that have been gained. Experiments conducted according to this idea have many times demonstrated their evil effects when put in actual trial. A notable instance is seen in the history of the Pilgrim Fathers. An experiment in socialism could not have been tried to better advantage unless in a community of archangels. There never was a more serious or public-minded body of men. They were face to face with great common perils and privations. Their character and the circumstances by which they were surrounded worked together strongly in the direction of producing an identity between each man's interest and that of the State. Their enterprise in socialism did away with private property in corn, which was their chief article of food, and they raised it in common. The result was that they were constantly in want. Their historian, Governor Bradford, narrates that "ye yong-men that were most able and fitte for labor and service did repine that they should spend their time and straingth to worke for other mens wives and children, without any recompense. The strong, or man of parts, had no more in division of victails

and cloaths than he that was weake and not able to doe a quarter ye other could; this was thought injuestice. . . . . Let none objecte this is men's corruption, and nothing to ye course it selfe. I answer, seeing all men have this corruption in them, God in his wisdome saw another course fiter for them." They took council together "that they might not still thus languish in miserie." They determined to invoke again the ancient alternative between work and starvation. They restored private property in corn and decided that each man should have what he raised. "This," Governor Bradford records, "had very good success; for it made all hands very industrious." Thereafter there was no scarcity of corn in the little State.

Such schemes, as I have said, involve a vast sacrifice of the choicest human gifts, which are not made use of when the strongest springs of human action are dispensed with. There is no taint of conservation about them. Society must use to the full its natural leaders, its men of industry, of enterprise and vigorous action. Much as they themselves accomplish, they incite and tempt other men and their enterprise opens up new avenues by which their fellow men achieve in the aggregate much more than they themselves accomplish. We are told that human nature is

changing and that the experiments of past times do not afford a criterion for the present; that manners are more gentle, men more kindly towards each other and towards the lower animals and that the "public service" motive may be substituted for the individual spur. There is doubtless some truth in this view, but so far as the primal and inborn instincts are concerned, real human nature does not appear to be changing very rapidly but seems to be a pretty constant quantity. There is painful evidence that when great trials come the veneer of civilization sometimes falls off and even the primitive savage reappears in all his hideous barbarity. Perhaps nothing can show human progress to the imagination more strikingly than the flight of a great ship through the air. And yet this mighty winged engine, almost the proudest offspring of the genius of man, presents a horrible antithesis and is most startlingly associated today with the mangling of women and children and the blowing up of hospitals. And second to it, if second it be, in ingenuity and fiendishness is the ship that sails beneath the surface of the sea.

There is another instinct in human nature, a great saving instinct that leads men to strive after the ideal. It showed itself ages ago. It still works powerfully in the human heart. But

we must keep down our pride and not rejoice too quickly that the race has reached the goal. We must keep up the struggle, not permitting our aspirations to make us lose sight of real conditions and to despise the lessons of past times.

The Utopian commonwealth still remains the dream of the poet, as it has been for thousands of years, and until the time comes when its realization shall not appear to be so far in the future the State will do well to keep itself upon the solid earth and continue to utilize human energy by laws encouraging individual thrift and enterprise.

Since so many avenues of human activity have come into existence, the laws relating to property will necessarily be complex. Rights of every sort must be defined, and to do this will often require a refinement of knowledge which we, who have not made a very special study of the subject, will not possess. The ruling principle in legislation should be justice between individuals and between individuals and the State. Laws should secure as much as possible a clarity of rights and should discourage vague claims and clouds upon titles and as a consequence the litigation which is apt to follow them. Since great harm has resulted from laws restricting conveyance to the end that large individual holdings might be perpetuated, there should be much freedom of alienation, and

open markets should be fostered for the free buying and selling of securities and the commodities that are dealt in in a highly developed commercial state. The dealings, however, should be confined so far as possible to the things themselves rather than their shadows. I think our laws have been far too free with certain great natural resources, and although our development has been accelerated, it could have been put upon a juster basis. Such deposits of coal and iron as the nation still possesses should be kept beyond the reach of monopoly, for the maintenance of human energy and for the equal use of all, just as the waters and the atmosphere are kept. Above all they should not be capitalized and the present made to pay not only for what it consumes but also an interest charge upon what is to be consumed by the future. Providence undertook to bear the expense of carrying these deposits when it made them so accessible to the hand of man, and the bounty of nature should not be made a burden upon mankind.

It has been a distinctive characteristic of our country that it has generously encouraged individual enterprise. It has invited the individual man to enter the wide open portal of opportunity, and by labor, by thrift and by invention, to achieve the best he is able to do; and it has set no bounds

upon his doing. This open opportunity, encouraged and safeguarded by the law, has been the notable thing about what has gone under the name of American freedom. And what has been achieved here, as well as a great deal that has been achieved abroad, has been due to our new enterprise in government. I attribute the amazing progress of the world during the last century and a third to the American Revolution more than to any other event. The system of opportunity inaugurated by it has been responsible for calling into play the most powerful source of energy that has ever appeared upon the planet. What is our most marvellous resource? What is it that more than our forests or other great gifts of nature is responsible for producing what we call civilization? The thing that transmutes all these inert things and presides in making them the instruments of progress is the intellect of man. The event which more than any other stands for the removal of restraint from this wonderful agency and for summoning it into action was the establishment of the American Commonwealth upon the principle which inspired its founding. That event ushered in the era of the people. Before it appeared the energies of the few were mainly absorbed in the government of the many, and the many, held in bondage to a rigid system which

presented no field for enterprise, and denied opportunity for advancement, existed as the playthings for monarchs, to drudge away their lives in peace or waste them in war. They were little better than mere cumberers of the earth.

A peasant may in all natural qualities have been the superior of his king, but he counted for nothing. The best specimens of manhood were not utilized, and the great majority of mankind formed an inert and stagnant mass. The principle of our Revolution changed all that. It gave legal privileges and opportunities that were measurably equal to all. In the case of merit, talent swiftly overcame the adverse conditions of fortune. Our system broke the shackles that chained the human intellect and set millions of minds in practical action. It made the track clear and all men were invited to enter the race. By the influence of our example it liberalized institutions the world over. Coincidently with this emancipation of the human intellect, a new era seemed to dawn in which the powers with which nature had endowed man seemed to be supremely magnified. We have only to recall the miracles of invention that have appeared during our era to witness the quickening power which has come with the equality of opportunity and the awakening of the minds of the millions. Since the estab-

lishment of freedom under democracy in America, there have appeared far more of the inventions that increase the productive power of man and his ability to surmount the obstacles of nature than during the twenty centuries that preceded.

The American Commonwealth has secured to the individual the amplest opportunity, not merely by extending equality and an open field, but it has itself kept out of enterprises not governmental in character and has permitted the individual to conduct them. And in doing that it has not only benefited the individual but it has benefited itself. The subject of government ownership is a very broad one. I shall concern myself with only a few of its many aspects and especially with that which relates to the individual and to the practical enlargement of his freedom. Our government was quite unique among governments in keeping generally out of industry and in leaving it to the enterprise of the people. The type of government which prevailed over Europe for many centuries was one of strict paternalism. It concerned itself not merely with those things which would be admittedly governmental today, but also with the things which are today included almost purely within the domain of the individual. He was subject in all things to regulation by the State. Even his religion was prescribed by law.

It was a crime to criticise the operations of government. It undertook in some instances to provide public granaries and to supply the people with food. Nearly everything was hedged about with regulation and the range of enterprise was very narrow. The subject was almost wholly dependent upon government and, except in a slight degree, opportunity for enterprise and initiative did not exist. Civilization was stagnant and progress in the modern sense was practically unknown. Between the church and the State very little was left to man. The escape from those dark ages was accomplished by a gradual but slow enlargement of freedom. As men became more free a new force unfolded itself. Enterprise and energy were brought into play and soon things began to be done which threatened the old order. Practical contributions were made towards comfort, and the condition of every class of men was improved. Civilization moved forward far more rapidly than where its only agency of advancement had been found in the State. The marvelous progress achieved since the American Revolution has been chiefly accomplished not by government, but by individual enterprise acting under its shield.

Individual initiative as distinguished from government initiative has been largely responsible

for the forward movement. The government of the United States as I have said has been distinguished far above all other governments for the opportunity and encouragement it has given the mass of the people. With the exception of Great Britain, the nations of Europe have only slowly emancipated themselves from the Mediæval order. But, although slowly, even there the opportunity for the individual has been increased. The difference, however, between the European system and our own in important fields of enterprise has been distinct enough for a comparison of results between enterprise conducted by government and enterprise conducted by individuals.

In those departments of industry which were controlled by government, progress abroad has been slow compared with that achieved by the United States in similar departments. The superiority of the latter country has not at all been due to any superiority of race. Our civilization received its impulse from the offspring of the European nations. As nearly as could be contrived it was a contest between systems, between a system of government initiative partly outgrown and yet continuing a vital force in society, and a system of individual freedom which had practically unchecked dominion throughout a whole nation. From the standpoint of achievement, I

believe the result of the contest has been decisively in favor of the system of freedom.

During that era mechanical inventions were more likely to appear in the relatively free countries or if they appeared elsewhere they were slow in finding their way into the service of the people. The old system cared little for an invention, except as it might be made useful to the State. The development of the telegraph and telephone furnishes an apt illustration. The optical telegraph was invented in France in the closing years of the eighteenth century. The public was denied the right to participate in the benefit of the invention and it was employed purely for military and other governmental purposes. Its development by private parties was made a crime. This invention was followed by a crude form of the electric telegraph in Germany, which under the stimulus of the policy of freedom might have been perfected into an efficient instrument for the public service. But since there was little incentive to private enterprise, it remained crude and useless and was treated by government as a toy. In France, as late as the middle of the last century, a cabinet minister declared in the Chamber of Deputies that the telegraph was a political and not a commercial instrument. Under the ancient system it might have remained useless

and ineffective to this day had it not been that in America the individual was encouraged by his own interest to make inroads upon the unknown, and the electric telegraph received practical development and became so useful a servant of humanity that it was forced upon the attention of Europe.

A telephone, or what was claimed to be a telephone, was invented in Germany in 1865, but nothing was done to make it of the slightest use. Then came an event of transcendant importance, perhaps the most brilliant in the history of mechanical discovery, the invention of Alexander Graham Bell. That invention may fairly be considered the beginning of the art of talking between two points by means of electricity. The telephone was invented and perfected in this country, and it so certainly demonstrated its efficiency that foreign governments were willing to adopt it, and it has since spread over the whole world.

The development of the telephone after it was invented will serve to illustrate further the superior advantage of individual initiative. In the great countries upon the continent of Europe, the new invention was taken possession of by the powerful agency of government, acting under what a school of economists call the "public ser-

vice" motive and, like an earthly Providence, considering nothing but the welfare of its subjects. In America the development of the telephone was carried on by individual men acting under the primal spur which leads men to try to better their condition and asking no favor of government but the freedom honestly to achieve and to enjoy the results of their doing. The start was a fair one. It is significant that of the many inventions that have made the telephone such a mighty thing of power, America with her system of private enterprise has contributed nearly all of them. The relay repeating apparatus, for instance, will take an almost inaudible message from a nearly exhausted current as from a spent runner, put it upon a fresh current and speed it along with new energy towards its goal, thus extending the range of the telephone to thousands of miles. That invention appeared under our system of private enterprise, as did the common battery system, the multiple switchboard, making great exchanges possible, and indeed all of the great improving inventions almost without exception. It may be observed also that the systems conducted by government abroad have been slow to put these new inventions into practical use, and the result is seen in the great inefficiency of their service compared with our system resting upon private

enterprise. The same thing has been witnessed in the case of the railroads. Upon that subject there is no higher authority than the distinguished President of Yale University. President Hadley has said that "not only the railroad itself but all the great improvements and economies in the handling of traffic have come in the countries where the system of private ownership prevailed." The epigram of Professor Leroy Beaulieu that "The State never invents anything" expresses much more truth than most epigrams. Illustrations might easily be multiplied of the sterility in invention and discovery of governments compared with individual enterprise. I shall cite one from our own country. The National Astronomical Observatory at Georgetown is a government institution. It has a superb collection of telescopes and other astronomical instruments. It is manned by a numerous and highly paid staff. And yet the discoveries which it has made in astronomy, excepting the work of one rare man, can easily be matched by those of some small and poorly equipped observatory upon the hilltop of a New England college town. Its achievements were such as to draw from Mr. Moody of Massachusetts in a speech in the House of Representatives the declaration that "the

administration and results of that establishment are the laughing stock of the scientific world."

Not merely do governments lag behind in invention, but when they attempt to conduct established lines of industry the collapse of the "public service" motive is again witnessed, and the cumbrous nature of their operation, their officialism and red tape greatly augment the expense of construction or of rendering a service.

New Zealand is a country which has been held up in our Congress and elsewhere as illustrating the blessings of government ownership and it will be profitable briefly to survey conditions there. I have not seen it recorded that invention has appeared in that country. It owns and operates some twenty-five hundred miles of railroad along with its telegraph and telephone lines. It is, perhaps, the paradise of the public ownership advocate. It is interesting to note the effect upon the treasury of the country. In 1912, the public debt of New Zealand, which had less than a third of the population of Massachusetts, was $450,000,000. Upon the basis of the relative population of the United States and of that country, a corresponding debt in our country should be some forty billions of dollars, or more than twice the amount that would be needed to pay off our present national debt and to purchase

our great railroad systems and our telephone and telegraph lines at the par of their respective capitalizations, with the United States steel corporation thrown into the bargain. One can well understand why New Zealand should be held up in the consideration of this subject in the Congress of the United States if it were presented as a warning rather than as an example.

There is near at hand a recent instance of railway construction by government. The Dominion of Canada comprises an intelligent population with a government which in point of character is fairly representative of its people. In 1903 the Dominion undertook the construction of a railway about eighteen hundred miles in length, from Moncton to Winnipeg. The preliminary estimates as stated to the House of Commons by the Minister of Finance showed that the cost would be some $60,000,000. In 1912 a royal commission of investigation was appointed and it appears from its report, which has recently been made public, that there had already been expended $109,000,000 and that the engineer then estimated that the road, when completed, would have cost exclusive of interest more than $160,000,000. The addition of interest would easily swell the total cost to more than three times the amount originally stated to the House of

Commons by the representative of the government. In other words a single track government railroad estimated to cost about $33,000 a mile is actually to cost more than $100,000 a mile.

If one is curious to see the results achieved in an American commonwealth by State-conducted enterprise on a large scale, let him study the workings of the experiment in Illinois during the years immediately preceding 1840. That State lacked nothing in the fine quality of its citizenship. If any democratic commonwealth of equal size could have succeeded it should have succeeded. It embarked extensively in the business of banking, insurance, transportation, and aspired to do much social service of the sort that some doctrinaires conceive it to be the exclusive prerogative of gentlemen, holding public offices and drawing public salaries, to render. The result of it all was that the service the State aimed to give was not performed as well as by private enterprise, and in the attempt to render this inferior service the State itself became bankrupt in a decade.

The public printing office is a business enterprise of our own government. It may be asserted without fear of contradiction that that institution is unique among the printing offices of the world in the scale of expense upon which it is conducted.

But the chief undertaking of a business char-

acter carried on by government in the United States is the post office. It is a long sanctioned governmental function and from its nature it lies outside the realm of the individual. But in the character of the service it renders it is near the line which divides industry between the State and private enterprise. The conditions in that service may be profitably studied in an attempt to determine the wisdom of government crossing this line and embarking upon the policy of public ownership. The total plant investment of the post office department consists of the letter boxes and a few other insignificant appliances of a similar character. Their cost is almost negligible. The post office buildings are not charged against the mail service as they obviously should be, and as they would be in a private enterprise, but are paid for out of general taxation. The same is true of other expenditures amounting to millions of dollars each year. The returns of the department, therefore, do not show the true cost of the service. The department pays no local or other taxes. On the other hand, the real capital with which the business is carried on, the engines, cars and railroads, representing a vast outlay, with the services of the men who operate them, are furnished by private persons. The mails and so-called postal express are transferred from the post offices to

the railroads and over the latter perhaps across the continent, and then from the receiving railroad stations again to the post offices at the charge of the carriers or of contractors. The government collects and assorts the mail and delivers it from the post offices. That is its chief and almost its entire function. The most important, and, speaking relatively, perhaps the most expensive burden of the work is borne by private parties who receive only one-fifth of the gross income and who even out of that small share pay heavy taxes to the support of government. For its work, which is chiefly that of collecting, assorting, and delivering the mail, the government takes four-fifths of the receipts of the service. It would be an interesting field of speculation for some of the economists to attempt to determine the probable cost of the mail, if government had constructed and owned the entire plant and if it performed directly the entire service; if it had built and rebuilt and perfected our railway system, had paid heavy taxes for the support of municipalities and states, had purchased the cars and engines and should employ directly the men to operate them. That it would not be far greater than it now is surpasses the bounds of belief. It is the salvation of the United States postal service from the standpoint of expense that so great a portion of it is rendered

by private parties at far less than their proportionate share on the basis of the relative service performed.

The assertion that the postal department would show a large surplus if the second-class and franked matter should pay the first-class rate is chiefly interesting because of the unreality of the assumption involved. Little or none of this matter would move at first-class rates and much of it, and notably the mass of the Congressional speeches, and many of the ponderous and useless reports which find their way speedily to the literary scrap-heap, would not be likely to move at any rate. The very printing of much of this matter throws an interesting sidelight upon the way in which government conducts business.

The post office also furnishes us an illustration of an evil which would be sure to fasten itself upon public ownership and operation under a government like our own. I refer to the transportation of newspapers and periodicals at a small portion of the actual cost to the government. Why should one class of citizens under a democratic government be accorded a rate which is not extended to all classes of citizens? The answer should have a decisive bearing upon any proposal to extend government ownership and operation of industry under our popular system

where political considerations have a controlling force. No sensible man would avow today that the postal subsidy is in the real interest of education. Why should we by taking on new and similar functions broaden the area of injustice, so that classes which are politically powerful may fatten at the expense of classes which are politically weak?

Of much significance is the admission of M. Barthelemy, an eminent jurist and professor of law at the University of Paris, who had been an ardent advocate of the nationalization of railways. In the preface to the seventh edition of his book, "Traits Elementaire de Droit Administratif," he observes that ideas would be opposed in the book "which were upheld in the previous editions. We no longer dare to favor the system of government operation of the railways." What had formerly appeared to him the only serious criticism against state operation had become preponderant. "It is not the directors, nor the engineers who administer the national railways, but the members of Parliament."

Lord Stanley, Postmaster General of Great Britain, called attention in the House of Commons to the evil of political pressure. Post office employees would bombard members of Parliament with applications for increase of wages. In a

report of a select committee on post office servants relating to employees in the provinces occurs the admission "that the Government was obliged to tolerate, owing to Parliamentary pressure, a degree of inefficiency, which in private employment would lead to dismissal of the employee."

The evils of political pressure in the management of business enterprise by a government like our own would be vastly greater than under governments of a different form. It would be the chief industry of the politicians to clog the public payrolls with the names of their supporters and to increase the salaries and special privileges which they enjoyed.

The traditional powers of government expand with the expansion of society. Its elementary function is, as I have said, to protect the citizen in the enjoyment of his rights. That protection today applies by natural expansion to conditions which in the not remote past were unappreciated or unknown. It applies to the education and labor of children, to the hours and conditions of labor of men and women, to the banishment of unwholesome and unsanitary conditions of living, to the regulation of public enterprises in the interest of the people and with due regard to the rights of those who have invested their capital, and to other obvious conditions, all of which, if properly

regarded, will leave none too much energy for the pursuit of the nearly obsolete art of governmental economy, so necessary to the stability and strength of nations. Government has functions enough already to tax to the utmost the capacity of any one set of agents and there is no need of its embarking in business enterprises in order that it may not be weak. Indeed its virtues as a government would be impaired by diverting its attention to production with the result that we should have poor government and poor management of business.

Since the system of private enterprise has worked so well in this country, it would appear to be of the highest importance to our future progress and development that we should continue to put temptations upon human activity and lure men to do their best. And it would appear to be the duty of the government to keep within the range of private effort, subject to due regulation in the public interest, those functions that are not purely governmental in their nature. It should aim to do the things that are purely governmental, and as to other things it should shelter the citizen and inspire him to do them, unless it is very clear that government could do them better. Thus in the long run more things will be done and they will be done better.

If the issue between the two systems of operation and ownership were to be decided by a comparison of economic results alone, I believe the decision would be decisively in favor of the system prevailing in the United States. But even if results were in favor of the foreign system, there would remain a weighty reason against its adoption in this country, found in the nature of our government. Monarchial governments may often engage in comprehensive industry, and although their direction may show the cumbrous faults of governmental management, the industry will yet not be in danger of becoming essentially political. But under a great democratic government like our own, having so wide a sway, the management of industry will inevitably become political and political management is of all things to be avoided. It demoralizes industry, deforms it with favoritism and injustice and corrupts government.

But there is another important reason why the range of private enterprise should be kept wide. It will not only better develop individual men, the chief end of our political and social institutions, it will not only accelerate invention and improvement, but it will tend to prevent the government from becoming over-powerful and from attaining such enormous proportions that those who wield it will become irresistible. The assumption of the

great energies of our modern civilization would enormously increase the power of government, tend to extinguish the individual and in the most reactionary fashion lead us back again to the old despotism. It matters little whether it is done by a colossal governmental machine or by a tyrant, if the individual man is shrivelled to the proportions of a pigmy. If, in addition to our well-tested functions of government, we are to arm it with the irresistible power which it would get from the ownership and operation of important industries, of our vast mileage of railways and other potent instrumentalities of our modern civilization, we should be returning to a bondage compared with which that of the ancient despot would appear light indeed. An executive fraud order issued without a trial by jury may today exclude a man from the use of the mails and make his continuance in business difficult if not impossible. If to this were added the power of autocratically prohibiting him from the use of the telephone, telegraph, express and railroads, for practical purposes the individual would be decapitated by executive decree. However a country might be characterized in which such a condition existed, no one would think of calling it free.

With these enormous energies in the hands of government, with the great numbers of employees

necessary to operate them under government control, and with the power to know what each man might write or speak to another, the men directing this mighty engine would be able to overbear all opposition and the mere force of the machinery of government would effectively banish liberty and practically control the opinions of the people. With the extension of the operations of government and the closing of avenues of private enterprise, more and more would it become necessary for men to enter its employment and to seek public office. A large portion of the adult population would derive their living from government. The industries they would operate would be exempt from taxation, and the burden of maintaining government would bear with crushing weight upon the industries not under its control. The people would be divided into two classes, those who were upon its payrolls and those who were intriguing to place themselves upon them. Under such a system invention would be discouraged, civilization become stagnant, if indeed it did not move backward, and we should have a return to the era when it never crossed the vision of statesmen that the public should be served, but only themselves and the State.

This evil condition has nowhere been presented with greater force than by John Stuart Mill in

his essay on Liberty. "Every function," he said, "superadded to those already exercised by the government, causes its influence over hopes and fears to be more widely diffused, and converts more and more the active and ambitious part of the public into hangers-on of the government, or of some party which aims at becoming the government. If," he added, "every part of the business of society which required organized concert, or large and comprehensive views, were in the hands of the government, and if government offices were universally filled by the ablest men, all the enlarged culture and practiced intelligence in the country, except the purely speculative, would be concentrated in a numerous bureaucracy, to whom alone the rest of the community would look for all things; the multitude for direction and dictation in all they had to do; the able and aspiring for personal advancement. To be admitted into the rank of this bureaucracy, and when admitted, to rise therein, would be the sole objects of ambition. Under this régime, not only is the outside public ill-qualified, for want of practical experience, to criticise or check the mode of operation of the bureaucracy, but even if the accidents of despotic or the natural working of popular institutions occasionally raise to the summit a ruler or rulers of reforming inclinations no reform can be

effected which is contrary to the interest of the bureaucracy." And again, "A government cannot have too much of the kind of activity which does not impede, but aids and stimulates, individual exertion and development. The mischief begins when instead of calling forth the activity and powers of individuals and bodies, it substitutes its own activity for theirs; when, instead of informing, advising, and upon occasion denouncing, it makes them work in fetters or bids them stand aside and does their work instead of them."

I have spoken thus at length in my two addresses before you of the importance of restricting government to the simple purpose for which it should exist because I believe its unchecked expansion in the direction I have indicated would mean the complete submergence of everything resembling liberty. It matters not that we give our consent to such a system, for we shall be none the less in slavery because our fetters are self-imposed. Of all sorts of despotism there is none more hard and remorseless than that of a colossal governmental machine. An individual tyrant will have some human qualities, a machine-tyrant none. Government should be irresistibly strong for any purpose of protecting its citizens in the fullest enjoyment of their rights, but it should be wholly

without power for purposes of encroachment upon the weakest individual under its sway. Our attitude towards government should have in it a judicious blending of obedience and jealousy. The more jealous we are as self-governing citizens that it shall not overstep the line of self-protection and draw unto itself the just rights of those for whom alone it exists, the more cheerfully shall we be able to render obedience to its decrees.

Burke well said that great empires and little minds go ill together. If the people who rule are composed of pigmies, how can the nation be great? Far more effectually than by adding new stretches of territory to their domain, self-governing nations can expand by the growth of their citizenship in the robust and self-reliant attributes of real manhood. Such States find their greatness not in the numbers but in the quality of their citizens. And instead of chafing them under the curb, they should encourage them to show their paces and drive with a loose rein.

CHAPTER III

Racial Sources of Our Liberty—The Ultimate Citizen—Various Duties—Relation of Liberty to Character

It has been my purpose to say something if I might that would help fix the general viewpoint of the citizen towards public questions and particularly his attitude toward government, for I believe that the general attitude of a given democracy towards government furnishes an important test of its fitness for political liberty. If men are to look to the State for everything and are not prepared manfully to struggle to supply their own deficiencies, they are not ready for real freedom, and if they are not ready for freedom, they are not ready for self-government. They have not attained that stage in their development where they have ceased to stand in need of a paternalistic system, and their spirit of dependence is inconsistent with a fitness for directing the affairs of the State. The history of the American people furnishes abundant proof of their possession of the qualities commonly asso-

ciated with an aptitude for self-government. If they are ever to show a servile dependence upon the State, that quality will need to be developed in them. A fashion of expressing emotion in laws has undoubtedly sprung up, but when the pinch of unreasonable restraint shall be felt, we may fairly hope that the people may be relied upon to check the enterprise of their legislatures so that their activity will be shown in repeal rather than in enactment. The power of numbers in a democracy is well-nigh supreme, and since there is an obvious distinction between right and power and also a tendency for the latter to encroach upon the former, there is a necessity for restraining power within strict limits.

The composite character of our citizenship is a circumstance which adds to the necessity of restraint in invoking the action of government. With a free habit of legislation indulged in at Washington and in the different states of the Union, in some of which the citizens of one race extraction or another have a preponderating influence, there is danger that laws will be passed which will accentuate or kindle antagonisms of race or sect and produce a discord deplorable to be witnessed in our democracy. If considerations of race or creed are to enter into our politics and divide parties, the State will be deprived of the

judgment of large sections of its citizens upon public questions which should alone be considered by them and our politics will become the arena of struggles between races and sects, our statute books defaced by class laws and men proscribed from public office or put into it for no better reason than one based upon their creed or race.

The men who controlled our country down to the time when our Constitution was formed were animated by a sincere love of liberty. They were filled with the fear of the unrestrained forms of government from which they had suffered persecution and which had driven them into exile. We should expect to find these ideas imbedded in the new government. It was a happy circumstance that a single race tone dominated during the first settlements of our country and until our institutions became firmly established. There was neither complexity nor compromise, as there probably would have been with a variety of races, but there was a unity expressive of the instinct of a single race. We speak of our first colonists as Anglo-Saxon, although so distinguished a writer as Goldwin Smith has called the Anglo-Saxon, as very often understood, an ethnological fancy. But the term will, on the whole, apply very well to the first bands of men and women who came out of England and Holland and settled

upon our Atlantic seaboard. And not long afterwards these were joined by other colonists from Germany and other north European countries, who were quite as much Anglo-Saxon as many who had come from the British Isles. It was fortunate, as I said, that there was this single tone of races which controlled our land when the seeds of the nation were planted and gave the first and determining impulse to our institutions and our civilization. Spain planted her settlements in Florida and in the countries to the south, and a civilization adapted from hers, but much modified by admixture of the Spaniards with the native races, is today in the ascendancy from the farthest southern point of South America to the Rio Grande. The navigators of that kingdom in their quest for the Indiès sailed their ships upon tropical and southern seas, and those daring men, the most skilful sailors of their time, laid the foundations of colonies which were chiefly tropical. The causes which inspired those colonizations were neither political nor were they animated by any zeal for religious freedom, but they sprang out of the love of adventure or the ambition to discover mines of gold or of other precious metals. Such household gods as the early Spanish colonists had they did not bring with them across the seas. They came not with the primary purpose of

establishing homes, but of acquiring wealth and returning again to their native land. They could scarcely be considered real colonists.

The first settlement of our America, however, was by a race of very different characteristics and it was animated by very different motives.

The Plymouth and Jamestown colonies, not second in fame to any colonies in the history of the world, may be regarded as the central roots of the nation. That at Plymouth was ideally the more perfect. It had the more distinct and higher motive. It more clearly foreshadowed the ideal America and may fairly be called the germ from which it sprang. The Plymouth colonists crossed the sea not merely or chiefly to better their conditions of living but to enjoy a larger measure of civil and religious liberty. They chose to face hardships and danger and establish a State in the wilderness rather than submit to the conditions surrounding them in the mother lands. The most important element in establishing the greatness of America may be traced to the character of the earlier immigrants. Those immigrants were of the soundest and strongest men that could be found in the countries of northern and western Europe.

Mr. Darwin has pointed to our nation as illustrating his theory of natural selection. The

danger of crossing the ocean in the little ships of that time was very great, and the dangers which the imagination portrayed were even greater. The perils of a wilderness infested by savages and wild beasts were sufficiently formidable in reality, but they seemed even more alarming when they were looked upon from the eastern shores of the Atlantic. Such forbidding dangers could make no appeal to weaklings and cowards. They beckoned strong and brave men to meet them, and strong and brave men responded. All along the Atlantic, settlements were established by a hardy stock and the sterling seed was sown from which a great nation was destined to spring.

It came about that not merely during the period before the Revolution, but for a half-century or more afterwards, this process of natural selection went on, and we see America in its making taking unto itself a virile, enterprising and daring body of citizens. The institutions adopted by people of such a character could not be otherwise than free. The atmosphere was charged with democracy and equality. Each man was in the eye of the law and of public opinion as good as every other and endowed with the same opportunity.

But the dangers and hardships of immigration gradually melted away. It became as safe to

cross the sea in modern ships as to remain at home. The savages and wild beasts had disappeared and the wilderness had given place to fields of wheat and corn. Men came over from the same motives that would lead them to move from one city or town to another in the same country. There is nothing in immigration today especially marked by dangers that call for heroes to meet them. Ideas cross the ocean with the same freedom as men and much more quickly. We have at last struck the broad level of the world, and everything political, social, or human finds its way to America. Just as every physical disease that afflicted the bodies of men in Europe has appeared on this side of the ocean, so all the problems that attacked their minds were sure to appear also. They have already arrived and we are exempt from nothing that is human and can wave nothing away by calling it un-American. We possessed at the beginning a clean slate which committed us to nothing, and we received the development coming from our free institutions and our splendid stock. Such was the foundation and it was indeed sound.

And what of the superstructure? Our freedom of access, our hospitality, our amazing opportunity, have brought to us each decade millions of people of stocks alien to that by which our

institutions were established. We have been put under an extraordinary strain. And just as England and other nations have in the past shown their colonizing energy by sending out offshoots, planting them upon distant and empty territories and building up new nations in their own image, so we are displaying at least an equal colonizing energy in the way in which we have received these vast numbers and are assimilating them and making them over essentially into our image.

I do not mean that the nation has in no respect been changed or modified in the process. The developments from these recent additions to our population have not yet clearly appeared, but we already can see enough to permit us to believe that as a result the nation will have not only a more cosmopolitan but a richer and a more versatile citizenship, that our free institutions will essentially remain intact and the spirit of our democracy be broadened.

The influence which the mixture of races is likely to exert upon our institutions and civilization is certainly not less important than the character of the race type ultimately to be evolved. We have seen little as yet of the operation of the commonly accepted idea of the "melting pot" and have witnessed little change in the individual type. The "melting pot" notion is that

we cast a certain number of Englishmen, Germans, Irishmen, Italians and members of other races into a crucible as we should the components of steel and that they become thoroughly melted and fused, and that after this fusion we may take out a new creation of uniform structure which will be the ultimate and standardized American. Possibly in the distant future we may see something of that sort, and the Irish and English crossed with the French and German, and every other known stock, may appear in a new creature never yet looked upon on the earth, who will be the typical member of the new American race.

But if America is to be such a melting pot, the same thing is likely to be true of the whole earth, which is becoming through the marvels of transportation a very small affair. And just as all races descended from Adam, so this tendency of the movement of peoples to break down boundaries of race would be to lead the procession of the divergent species back to Adam again and give us a single and restored race of the original consistency. But the process will surely be slow. Indeed I am skeptical enough to doubt that this standardized world citizen or American citizen is destined to appear in a future which is not very distant. I fancy the world for mundane purposes will be as well off without either and that to

increase the monotony of its citizens will not contribute to the interest of the world. The race landscape, if that term is permissible, will be no less interesting if it shall maintain its present general features even though the divisions between the fields may not be so abrupt but may blend into each other. The strong tendency is toward the preservation of the integrity of the race stocks.

But there is a practical truth in the melting pot notion likely to be seen in times which are not remote. The fusion is more likely to be witnessed in our general achievement and in the sum of our civilization. If we shall prove reasonably homogeneous in one respect and remain devoted to democracy and the maintenance of free institutions, then, under the stimulus of our freedom, we may hope to witness in our country the noblest achievements, the fairest fruitage of the different races in our population. We may hope to see the industrial efficiency of the Germans, the strong fibre of the British with their genius for political freedom, and the literary and artistic qualities of the Latin race.

We shall have a "melting pot" worth while, if out of it shall come a fusion and blending of the best works of all races and a more many sided and a fairer civilization. Thus we may also await

with complacency the far away time when we shall have all racial traits blended in each individual, with possibly the worst traits exaggerated and the best ones neutralizing each other. It will perhaps be as safe to take our chances with the old races, modified as they will doubtless be, but not merged into each other, nor with the identity of the original stocks destroyed.

Projects for the restriction of immigration I will say in passing should be very cautiously undertaken. So far as they shall operate to exclude defective classes they are good. But one who has been denied opportunities of education cannot be considered a defective, and he may possess the best elements of citizenship. The illiteracy line furnishes a test of exclusion simply and not a test of fitness. If we aimed at shutting out anarchists, we could more certainly accomplish our purpose by denying admission to all who could read and write than by excluding those who could do neither. But the only relation that immigration has to my general subject is that it results in the end in adding new elements to our ruling class from the fact that it adds to our numbers.

The power in our system is found in the majority. We go through a political campaign and at its end we accept the arbitrement of

numbers and call that contention right, or at least practically established, which has received the most votes. As a result we make very much of numbers. We are always counting ourselves. We no sooner conclude one census than we begin another. Our orators have from times beyond memory reserved for the topping of their most glowing periods fine bursts of eloquence about the number of our people, now at last, for the thrilling of our souls, at the swelling climax of one hundred millions. We have elevated numbers into a species of divinity and it is not at all strange that our worship of her should sometimes have called out the gibes of the unsympathetic onlooker. We have had the majority method questioned. In fact it has been put forward more than once as a general principle, and there is even a certain fashion in repeating it, that the majority is always wrong, until it has, sometimes after years of effort, had the truth drummed into it by the minority, and that even then it has often proved itself incorrigible and finally gone to destruction rather than accept the naked truth. William Lloyd Garrison took no note of passing majorities when he declared that one with God was a majority, the truth of which we should all doubtless admit, although it would be of more practical value if we could only know how upon

practical questions to locate the Deity. Mr. Matthew Arnold in one of his striking addresses in America gives us much ancient wisdom on the subject. "The majority are bad" is a saying he quotes from one of the wise men of Greece, and in line with it he repeats from the New Testament "Many are called, few chosen." And then he puts before us that remarkable picture which Plato drew of Athens. "There is but a very small remnant of honest followers of wisdom" and these men surrounded by "the madness of the multitude" are like one "who has fallen among wild beasts." One who belongs to this remnant "will resolve to keep still, . . . as it were standing aside under a wall in a storm of dust and hurricane of driving wind and he will endure to behold the rest filled with iniquity, if only he himself may live his life clear of injustice and impiety, and depart when his time comes in mild and gracious mood with fair hope." And he tells us Plato was right in the dark picture he drew of his city, that "the majority were bad and the remnant were impotent" and that in a few years Athens fell as an independent state. Yet Mr. Arnold after all gives us very little help in solving the practical question of government. Here are vast multitudes of men to be governed. Shall these numbers govern themselves or shall the few do the work

of governing the many? Both methods have been tried. One difficulty with government by the saving few has been the difficulty in finding them. The few who get to the surface under any system of selection that has yet been devised are quite as apt to be of the worst as of the best. They have more than once showed themselves to be of Plato's wild beasts rather than of those "who have tasted how sweet and blessed a possession is wisdom." And if states have fallen through the madness of majorities, so they have sometimes fallen through the wickedness of autocrats or oligarchies.

But we must not conclude that there is no real point to what Mr. Arnold has said. There is very much point to it and the historic American system has striven to take note of it. Does it permit the wind and hurricane, the fierce passion of the majority of the moment to have their unchecked sway? By no means. It has built up great walls in the shelter of which the wise men may stand in "the hurricane of driving wind"; and the saving remnant are not selected by any artificial rule but they are chosen by a natural selection. They are those who have the vision to see and the courage to stand out in defence of wisdom and with no hope of reward. They are willing to be the uncrowned rulers, even the persecuted saviors of

their country. Our institutions furnish checks against passionate and hasty action and give this natural saving remnant the time to bring salvation. Thus the one of William Lloyd Garrison has a chance to show that God is really with him and to become the majority. Thus the germ of truth has time to grow and to spread among the multitude. But without this rampart against error our system would be as unstable as the wind, and simply the necessity for order would overturn our democracy and compel us again to find refuge in the government of the few. I have, therefore, always accounted those not the friends but the enemies of popular rule who would sweep away our defences against sudden impulse, subject us to the tests that have time and again proved the undoing of democratic states, and destroy those wise expedients designed to secure deliberation and the formation of a real popular opinion in advance of final popular action. If there is a wrong in the community, reflection will intensify the sense of it and lead to its destruction, and will also prevent the making of some great and possibly fatal mistakes. In the history of government in Athens, two things strike us—the brilliant political genius of that people and the lack of some restraint which should secure deliberation before action. The man who can wisely decide a

great public question out of hand without thought and study is a rare one if indeed he exists at all. But what might be possible to a man would be impossible to a crowd when, under the impulse of excitement, the units are swallowed up by the play of many minds upon each other and a monster is generated which, however exalted it may sometimes be in some particular, is incapable of reason. The long known danger of direct democracies, known ever since the first one was established, is the danger of hasty action upon impulse, without real common counsel and without time to secure information or to take the deliberate second thought. That defect is the precise thing which the framers of our system were at great pains to remedy. They were the wisest men of their time. Some of them had staked everything they had, not excepting their lives, in order to establish their country, and they sought to give her the best form of government they could devise. The charge has been reserved for a very recent time when the now happily dwindling forces of hysteria were in the ascendant, that the framers of our government were acting out of regard for the interests. In those days almost the sole interests were lands which anyone could have for the asking and houses which any industrious man might build. Those wise men could not know what was to come,

but they understood the past and upon that they established their government for the future. Some things that were for the good of men have come slowly under our system, but some things also have been wholly averted that should never come at all. It has permitted greater progress of the kind that endures than can be found elsewhere in the world, but it has imposed a check upon the impulsive progressive who would violate the speed limit. We have attempted under democracy to secure deliberation by doing away with direct popular action, by the adoption of the representative system and by an elaborate mechanism which ordinarily will require time to put it in complete operation and yet in emergencies will move quickly. In a great democracy like ours, scattered over many states, there could be no such thing as taking common counsel by the people upon matters of governmental detail. The representative system, therefore, was a necessity. The legislature as an institution like other human institutions is far from infallible. With our enormous expansion in wealth, with the pressure and indeed the necessity for legislation vitally affecting interests, our representative system has been put under a severe strain. There have undoubtedly been in our legislatures far too many men animated by a sincere regard for their own

interest, which they have followed with devout loyalty on all occasions, and the legislative jobber has had at times an opportunity to revel in a golden age. But it is scarcely to be doubted that the legislatures and the Congresses that were upon the stage during the period of our enormous expansion upon the whole fairly represented the people. Possibly if those who lived then had known all that we know today things might have been managed more justly. Those who would reconstruct past history have an obvious advantage over those who have made it, because they can summon to their aid an astonishing amount of that wisdom which follows the event. To rebuild history in imagination and to avoid in our minds the errors that have been made is not at all a difficult art. It is no more difficult than to get rich out of yesterday's stock market. But the statesman who stands in the front of the advancing line and facing the future has no control over the past. His domain is the present and he strives to influence what is to come. He must act before he knows how things are going to turn out. If we were to live those times over again we should be fortunate if we did not do worse. When expansion was in the air and the country was plunging forward by leaps and bounds, it required courage for one to oppose a

policy bearing the approved label, and one who did oppose was sure to be denounced in the primitive dialect of that day as one or the other of the things for which mollycoddle and reactionary stand in the more refined diction of our own time. The legislatures and courts were even more conservative than the people. When cities and counties in the surging West were bidding against each other for railroads and manufacturing establishments, they would have been covered, over and over again, with bonds issued in aid of those enterprises had it not been for inconvenient laws and for the injunctions of the courts. Things were probably no worse in the State legislatures than they would have been had Congress possessed that complete control which it is now assumed would have been attended by perfect action. If the forces of privilege, scattered through forty capitals, sometimes proved themselves too powerful and overcame the resistance of human nature, what could have been expected had they been concentrated in a single army with their formidable batteries levelled upon a single citadel? As a whole in those days the legislatures were relatively conservative. The things that were wrong were due either to a lack of vigilance on the part of the constituencies in making choice of their representatives or to the undiscriminating demand

for progress at any price. But the good fairly outweighed the evil. The development of the country was achieved with amazing success and solid benefits were bequeathed under our representative system. Under a direct system we should probably have taken wild plunges into chaos with violent reactions and with a maximum of disturbance and a minimum of progress. The lesson to be derived from many of the mistakes that were made is not that we should change our system but that the people should themselves give more careful attention to public affairs and that they should be more critical of the character of the men they choose to represent them. If they should really be more critical they will surely be more just.

This leads me to observe that while criticism is important, it is one of the first duties of the citizen that he should be just to the officers of his government. In painting our public servants, our favorite colors are black and white and we are quite too much disposed grossly to over-praise one set of public men and to restore the equilibrium by as grossly abusing another set. Sometimes both the praise and the censure should be transposed in their application, for the praise may be given to the weak or shifty politician who sails before the wind and courts the momentary

applause, while the abuse is generously bestowed upon the man who is heroically trying to hold the rudder true and, against adverse winds, to keep the ship upon its true course. The discrimination of the citizen in bestowing praise or censure is not merely important because it is his duty to be just as between men, but it will operate as a powerful force in good government. It can be made a very strong incentive to the public servant to study to follow the true rather than the popular course. The good opinion of citizens is one of the highest prizes for which public officers may contend. It will be anything but an incentive to right conduct if that good opinion is won by demagogical action. On the other hand, condemnation of the citizen should be a powerful deterrent from evil courses. To bestow it upon one who has bravely performed a virtuous action is to invert the order of things. To be really just to our public men is well worth trying. It will give us better government. It will help take public life from the shrill key upon which it is getting. It will help put an end to mere vituperation and to our doing our thinking in epithets, and will tend also to do away with the mere bogie-man—the public man whom the public imagination generously endows with all the known vices and whose name is used to frighten people

away from the support of a set of principles without regard to whether they are good or bad. Justice on the part of the citizen towards public servants is something that vitally concerns the good of the State.

It is also important that the citizen should maintain so far as he can a hopeful condition of mind with regard to the country. Such a condition of mind is especially useful in a time of great national peril. To cry calamity when the nation is doing well is a very bad thing. Optimism sometimes may pluck the flower safety from the nettle danger. The duty of hopefulness, however, does not warrant us in painting black white, and putting ourselves in a fool's paradise. Since we should adapt our policies to real conditions, it is far better to endeavor to see those conditions precisely as they are and not to practice self-deception, nor use mystical language to show that our favorite remedies are working well upon the body politic when in reality they are working badly and their use should be stopped.

John Fiske shrewdly observed that it seemed to him that metaphysics were of precious little use, only one needed to know them in order to refute other metaphysics. Political psychology is a science in the same class. There was never a sky so bright or a prospect so hopeful that some

man could not see a cloud or scent danger. On the other hand, we have seen nations led into the most menacing perils while the leaders have been soothing the people and have serenely inculcated the virtues of optimism. We need to cultivate the difficult art of seeing things straight and clearly without the distortion of colored or twisted lenses.

It is a prime duty of the citizen also to be just to his own time, as well as to the men who represent him. That is a very difficult and unusual virtue. It has commonly been characteristic of men to look upon their own times as degenerate times. The poets have located the golden age sometimes in the past, sometimes in the future, but never in the present. That is usually the domain of the muckraker. We are not likely to become complacent and self-satisfied even if we strive to treat ourselves with justice.

If the average citizen were expected to solve all the problems of the intricate art of government, our democracy might appear to be a hopeless system, not so much because the average citizen cannot solve them as that he will not give the time to solve them. But he should study and determine the general principles of government which are involved, and to be content with doing less than that is to neglect his duty. The solution of such problems requires painstaking study just as the

mastery of the everyday calling in private life requires painstaking study. In the working world the difference between careful study and a happy-go-lucky indolence is the difference between success and failure. But the flatterers of the people teach them that world questions, economical systems for nations, proposals regulating on a broad scale human activities, can be settled in an offhand fashion by intuition or divine inspiration. That is the flattering attitude of the politicians to us just before an election. Hawthorne termed the prison the "black flower" of civilization and to borrow this phrase, the demagogue may fairly be called the "black flower" of democracy, at least of an unintelligent democracy. He sweetly calls us "the people" and then he elevates the people into a divinity. The intelligence of the thing called the people is the average of the intelligence of the individuals composing it. The attribute in which the average individual differs from the people is in the possession by the latter of the tremendous power which results from the union of great masses of men. If the average individual be ignorant or base, that power resulting from union is pretty sure to become an instrument of evil and the skilful demagogue will be able to wield it for his own selfish purpose at the moment. The

best protection against the demagogue is found in the general virtue and intelligence of the people.

It is a healthy sign that society is full of proposals for reform as it indicates a more general diffusion of intelligence and public spirit. Not indeed that even the greater number of these proposals possess merit as practical schemes for the betterment of society. In a period distinguished by discovery our patent office at Washington is flooded with inventions, many of them of marvellous ingenuity but of little or no practical value. The multitude of proposals for reform, useless though most of them otherwise are, indicate a great awakening of civic interest, just as the vast numbers of valueless inventions indicate that society is charged with the genius of discovery which will flower out here and there in great and splendid accomplishments. While the citizen may rejoice at the signs of political invention, he should be careful about adopting them all as practical instrumentalities of government. It is a poor notion of progress that it means the acceptance of every specious political invention. The most of these devices may very profitably for the State be permitted to exist only as natural incidents in bringing to light the few great things that make for the improvement of society and government.

History strikes certain high points. The intervening spaces are lower not from lack of men, but from lack of issues. Progress after a forward plunge takes its repose. It should not always be kept under the whip and spur or we should have false movements needing to be retraced. One of the marks of petty times is seen in the vain attempt to throw forward a receding tide or to push on a flowing tide perpetually and with no return.

The citizen also should realize that taxation and governmental expenditure are by no means sordid subjects. Governmental economy is fast becoming a lost art. In former times a statesman could win popular approval by restraint in taxation and frugality in expenditure. That time seems very far off today. We do indeed in our political speeches pay glowing tributes to economy, but it is an economy that is shown in spending more, and popularity is purchased by general increase of salaries, by the opening of public "pork barrels" and by a growing extravagance. There are no greater everyday virtues in government than thrift and economy, and they lie not merely at the basis of the prosperity but even of the existence of states. When a nation has taxed the substance out of property, usually everything else is gone. Industry falls for lack of capital

and there is nothing to support labor. The over-tilled fields will not produce enough to satisfy the tax gatherer and are abandoned. Great nations have gone into decay and even to destruction because of the weight of taxation. The evil effects of extravagance are not alone witnessed in the condition of those who pay taxes into the treasury but they are first seen in the poverty and distress of the masses of the people.

After these digressions to express opinions upon such duties of citizenship as lay along my path, I will now return to the consideration of my general subject.

The most difficult problem to deal with touching the interference of law with liberty grows out of the relations between labor and capital. It is of the essence of liberty that a man should have the right to decide whether he will sell his labor at wages and in an employment which might be offered him. He would have nothing resembling liberty if he were compelled either to accept or to reject an employment or to work for a wage to which he did not agree. It would seem hardly necessary to observe that one man's right to refuse an employment could be no clearer than the right of another to accept it. Under no notion of liberty, or of the law which did not uphold slavery and disorder, could one man of right interfere

violently with another to compel him to accept or to reject an employment. And the right of contract on the part of an employer is as clear as is the same right on the part of the employed. These statements may seem axiomatic in character, but if their truth were generally recognized in practice many of the differences between capital and labor would disappear.

The great combinations of capital on the one hand and of labor on the other have very nearly eradicated the individual and have made of labor and capital abstract sorts of institutions, with laws of their own which should not, however, be permitted to contravene the fundamental principles of natural right to which I have just been referring. The individual workingman would make but a sorry figure dealing single-handed concerning his wages or any other condition of his labor with an employer of ten thousand men. The self-interest of the employer in such a case would in no degree be appealed to, but only his grace and sense of justice, and those are not the most potent factors in fixing the cost of manufacture. For the laborer to reject the employment would make not the slightest difference to the employer, but to raise his wages might involve raising the wages of his fellow workmen. Without combination on the part of laborers, they would be entirely

at the mercy of the employers. Thus the workingman surrenders voluntarily something from his natural right, and labor unions are formed able to deal more on terms of equality with the employer. The individual workingman is to an extent at least swallowed up in the organization. If the struggle in any given field between the two great forces of production—capital and labor—could be looked upon merely as industrial warfare affecting the belligerents alone, they might be permitted to fight it out, but in many of these controversies, and especially in such as involve the public service, the public is vitally concerned. The stoppage of the great arteries of commerce might bring not merely severe business losses, but even starvation to the populations of great cities and states. How far may the government go to compel the owners of the properties to yield or the men to work against their will? To require a carrier to render a public service at less than its cost may involve the destruction of his property, and to require a man to work upon terms to which he does not agree involves something which has the appearance of slavery.

At this point lies the riddle of our system. How far may arbitration be made compulsory?—for in some form of arbitration the remedy apparently is to be found. Up to a certain point

the duty of the State is clear. It should sternly repress violence by either of the contending forces and it should prohibit either belligerent from carrying the war against neutrals by use of the secondary boycott.

Undoubtedly labor unions conducted according to law have secured very great benefits to the laboring man. These benefits, however, have not been conferred without some expense to him which a proper conduct of the unions should not entail. The conduct of powerful unions has a tendency to become autocratic, just as the unrestrained power of government is sure to become autocratic. The workingman, for instance, is likely to suffer from the attempt to equalize the work of different men, a proceeding which tends to make the least skilful workman set the pace and levels down rather than levels up. The unions show the same fault as the State is coming to show. By imposing too many restraints and a too rigid rule, they make injurious inroads upon the liberty of their members. To take away from the efficient man the incentive to distinguish himself by his skill is contrary to the principle of conservation, and reduces, if it does not destroy, his opportunity to rise. If a workingman may develop into the highly skilled workingman, by natural gradations he may rise to the position of manager of

a great industry. Such an elevation has been witnessed times almost without number in our country, but it has usually been seen where men have had the free opportunity to show the possession of unusual qualities, unfettered by such restraints as unions often impose. Men working upon the tracks of the railroads or as clerks in their offices have risen to become the heads of great transportation systems. Miners delving in the bosom of the earth, thousands of feet below the surface, have emerged from the depths and have risen to positions of the first influence and power. The new immigrants who dug our ditches yesterday are our policemen today, and anti-climax though it may seem, are likely to be our aldermen tomorrow. Penniless young men who have come to us from Europe in the steerage of immigrant ships have in a few years sailed back across the ocean in their own private yachts. Boys from the farms have risen to the highest places in our states and in the nation. With sometimes a touch of crudity, these men winning their way by force of merit have proven themselves to be our natural leaders with talents fitted for the places they have attained, and with the virility and strength not commonly seen in the ready-made leaders imposed by some long-established system of society or government.

Such achievements as these have been accomplished under a free system for the display of talent and are not likely to be witnessed in those callings where restraint is placed upon merit. The most deserving workingmen are likely to suffer most from tyranny on the part of their unions.

In what I have said against the unnecessary encroachment of the law upon liberty, I have considered the subject chiefly from the standpoint of the individual's right to liberty and of the great importance of liberty as an agency in pushing forward civilization. It is not less important, however, from the standpoint of the development of character. One might not wish to decide offhand that if there were no vice there could be no virtue. That is a subject within the realm of the theologian. But if there were nothing for virtue to struggle against, it would appear to the lay mind that it would at least grow weak, if indeed it did not die from lack of exercise. If statutory guideposts to goodness were to be set up at every by-path according to the view which the State takes of goodness, if difficulties real or imaginary were to be made smooth and men personally conducted by officers of the law, if censorships of various sorts were to be put in force, and if all temptations were to be banished, what would

be the effect upon the race? Would it grow in strength or would its virility become impaired?

This can be made a very wide or a very narrow world, and surely superfluous law is not making it wider. The citizen may walk the prim and level pathways laid out by the State with his glances shut in lest he see too much, or he may wander over the meadows and through the untended woods, and even conquer if he may the difficulties of the mountain top and dare to look upon whatever may be seen upon the wide stretch of the land or in the whole sweep of the sky. In what way would man get more out of life? In what way would the character of the individual be made stronger? This is almost the last question considered by the public regulators of conduct. Shall we have stronger men and women and a greater nation if we shall narrow the range of the citizen, and the State shall bear all his burdens and permit him to look upon nothing or do nothing which, according to its artificial standards, may appear to be wrong? In my opinion, these questions answer themselves. So far as the development of character and its effect upon the greatness of the State are concerned, if after a century or two of the strict reign of paternalism in its perfection which now seems portended, our nation should fall before some rugged people of

the Vandal type, it would not be because we lacked Dreadnoughts or because our seas were not sown with mines, for whether we had either would matter not, but because excessive governmental coddling had produced a flabby and a spineless race. Those immortal words of John Milton apply to conditions today as truly as they did to the conditions for which they were written:

He that can comprehend and consider vice with all her baits and seeming pleasures and yet abstain and yet distinguish and yet prefer that which is truly better, he is the true warfaring Christian. I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and seeks her adversary, but slinks out of the race where that immortal garland is to be run for, not without dust and heat. . . . That which purifies us is trial, and trial is by what is contrary. That virtue, therefore, which is but a youngling in the contemplation of evil, and knows not the utmost that vice promises to her followers, and rejects it, is but a blank virtue, not a pure. Her whiteness is but an excremental whiteness, which was the reason why our sage and serious poet Spencer, describing true temperance under the person of Guion, brings him in with his palmer through the cave of Mammon and the bower of earthly bliss that he might see and know and yet abstain.

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CHAPTER IV

The Liberty of the Individual Under Our Constitution

In what I have been saying I have tried to inculcate the notion that the law should respect liberty, and restraint should be exercised by government in imposing statutory or other fetters upon the individual. I have based the suggestions I have made chiefly upon natural right and upon the importance of freedom to civilization and progress and to the development of individual character. I shall now proceed more definitely to consider our own form of government which I believe embodies, far more than any government of former times, those ideas of individual liberty and of restraint in the exercise of governmental power upon which I have endeavored to put emphasis. The Constitution of the United States as a topic of discussion is somewhat threadbare. It has been the object of far more attention than any other writing in the literature of politics, and it easily holds the primacy among all political scriptures. It has been attacked and defended by

great orators, profoundly studied by our greatest lawyers, authoritatively construed by the most august judicial body in the world, and interpreted by authors, big and little, almost without number. Whatever new thing is said about it is apt to be of doubtful value, and when one leaves the beaten paths there is danger that he may lose himself and those who follow him. It is somewhat presumptuous for one from the outside world to come to Yale with a discussion of the Constitution. He might better engage in the ancient and profitless trade of carrying coals to Newcastle. But a brief consideration of its philosophy and of its attitude towards restraint will serve to bring scripture to the aid of my generalizations and impart, I trust, some point and definiteness to what I have been saying.

The astounding development that has been achieved in so many fields during the century and a quarter in which the Constitution has been in operation gives a novelty to its application today. From however remote an antiquity the document may have come down to us, yet so long as it shall have the force of our supreme law, directing our governing organs of the moment, it must constantly make an accounting with the new conditions which an advancing civilization presents. And the question whether it has become antiquated

and outgrown will always have a special pertinency, especially where it imposes limitations upon our agencies of government.

Let us explore the ground upon which constitutional limitation rests. Since the agents of government must be human like ourselves, the worse men are, the worse their governors are apt to be. Indeed, men acting as rulers become exposed to a new and powerful set of temptations in addition to those that are the common human inheritance. It is only a rare nature that can drink of the cup of power with moderation, and the unprincipled ruler whom chance or his own cunning sometimes elevates to a high place may easily become a scourge to mankind. Since restraint is necessary to govern men in private station, it becomes even more necessary when they are acting under the temptations to which the possession of power exposes them, and it becomes even more necessary also to safeguard certain fundamental human rights against ordinary human fallibility on the part of rulers. If one were asked to survey history and point out the direct instrument of the greatest oppression, he would probably name government. Thousands of men have been exiled from their country or have trodden the path to the scaffold only because of their virtues. Nations have been given over by rulers to be plundered by

favorites. To speak the truth and to worship according to the dictates of conscience have been made crimes. The wise men who framed our political system profoundly appreciated the necessity for government and they appreciated its abuses also. They aimed to give all needed power but they aimed equally at another thing. Although they granted power they imposed restraint, and underneath the imperial governmental forces which they shaped and set in motion, they established the muniments of individual freedom.

When our political ancestors forcibly detached themselves from the British Empire and made good their declaration of independence, they were left without a central government and there was no time for the necessary political institutions to grow up. They were confronted with questions of common concern which would not brook delay and with which there was no common authority to deal. With thirteen states, sovereign and independent and sure soon to become clashing and perhaps at war with each other, the statesmen of that period could not await the slow process of the development of a Constitution by evolution, but that they might avert chaos and the loss of the political freedom they had won, they were compelled to create a frame of government, as it

were, to order. To meet the emergency in which they found themselves they were driven to construct a government upon paper and to set its different organs at work upon lines that seemed to be theoretical. It was a happy circumstance for the new nation that this paper system was put in practical operation by a statesman with the wisdom and authority of George Washington having at his right hand a man of the transcendent political genius of Alexander Hamilton. Preeminent as Washington was in war and in the creation of our Constitution he rendered his country a service not less distinguished when he set our government in motion and transformed a written constitution into a vital and living organism. Prior to the adoption of the Constitution, there had, indeed, been a nominal government established by the Articles of Confederation, but it had no executive, it had no court, and its only official expression was through a Congress which possessed no real power and whose decrees the states felt themselves at liberty to treat with entire contempt. The new government soon became a real government. As it was designed to be a government of laws, the Congress had been made the central organ and three-fourths of the Constitution had been devoted to delineating its structure and to defining and limiting its func-

tions. The powers conferred upon it were sovereign in their character and ample to deal with all matters of common concern. An executive was created separate and apart from the Legislature except with the limited power of veto, and a court was established and made the arbiter of all cases arising not merely under the laws but under the Constitution itself.

It would appear to follow from all this that if one were seeking for the distinctive thing about the American Constitution, he would point to the fact that it was a written constitution, struck off, as Mr. Gladstone said of it, at a given time by the brain and purpose of man. It doubtless was unique in that respect, for the constitutions of other nations, using the term in a sense in which it would not include ordinary statute law, had almost invariably been unwritten, and had been gradually evolved from the conditions surrounding them. But the important features of our Constitution were not invented by those who wrote it. Many of its principles were not new and untried but had been tested for centuries in the history of other nations. The novelty of the work and the genius of those who performed it are seen in bringing them together for the first time in a single and connected document put forth as the basis of a nation. While then the Constitution

was unique as the written frame of a State, that is a distinction of form and does not of itself characterize the philosophy of the document. The distinctive thing about the American Constitution which appears to me most strongly to stamp its character and which separates it from all frames of government that had previously existed is that it established a government upon the individual and with primary reference to his rights. It is seen in the imposition of restraint and in the safeguarding of that high kind of liberty by which the individual is protected against the encroachment even of the government. This appears first from the source of the power of our government and the direction from which that power proceeds. In other nations whatever liberty existed had commonly appeared in the form of grants from sovereigns to the people. The liberties the people enjoyed came by gift from kings. Whatever power was not granted by the king he still retained. But the American Constitution was framed upon a theory entirely opposite to that. It was framed by the people through their representatives. Such powers as it had the people gave and all power not delegated was expressly reserved to the people or to the states. Thus under our system the source of authority is from below and not from above; it comes from the foundation of the

social structure. Under the system which preceded ours it came from above. If a king relinquished any power over his people and granted them any liberty, he granted only that which he claimed to have received from the King of Kings. With us all ungranted power resides in the people and constitutes a limitation upon government. The truth of Lincoln's immortal declaration that our government is a government of the people, by the people, for the people, is thus seen in the distinctive thing about it—that it is a government from the people.

The original Constitution was drawn upon the theory that it was a government only of powers specifically granted, and that theory was established beyond all question by the tenth amendment which declared that the powers not delegated to the United States by the Constitution nor prohibited by it to the states were reserved to the states respectively or to the people. In addition to the general limitation resulting from a failure to grant certain powers to the national government the exercise by it of certain other powers was expressly prohibited. The distinctive thing, therefore, about the American Constitution which separated it from all constitutions, which had previously been formed, is seen in the manner in which it imposed limitations upon the

government itself and in its substantial assertion of the theory that all power originally resided in the people and that government had no authority over them which they had not granted.

Under the monarchical systems which preceded the era of our nation, there was a slight semblance of reason for a nation's existing for a sovereign. He at least had a human consciousness and the homage of the multitude was lavished upon a sentient being. But the State separated from the king, the modern commonwealth, has no eyes, no ears, no consciousness of its own and is a dumb and senseless idol. Our system stripped the State of the superstition with which it had long been invested and it emancipated us from a servitude which has been responsible for much of the misery of mankind. We worship no king or no abstraction of government. When we serve the State we are serving ourselves and our fellow men. We are helping to make more perfect in its operations a great instrumentality for human good and for bettering the condition of the millions of units for whom the State exists. It cannot be too clearly emphasized that our State was established not as a mere end in itself but as an instrumentality for the good of those then living under its sway and of those who were to come after them. It was indis-

putably formed upon the theory that the State was made for man and not man for the State.

The limitations upon our government are seen not merely in the general reservation to the people of all powers which were not granted but in the express prohibitions which were placed in the constitution. In Great Britain, which next to our country is the freest in the world, the Parliament is a law unto itself, and it may range without hindrance over the whole field of government. It may punish a man for an act which at the time of its commission infringed upon no law; it may take from him his property without any other legal process than the mere passage of law. It might even repeal Magna Carta. But our Constitution established certain great muniments of freedom and it drew about them a sacred circle into which no government may penetrate. Our government can not pass ex post facto laws or bills of attainder. It cannot suspend the writ of habeas corpus except in cases of rebellion or invasion. It may impose duties and excises and direct taxes but they must be uniform. It may not impose export taxes or grant any title of nobility. It can establish no state religion or prohibit the free exercise thereof; nor may it abridge the freedom of speech or of the press, or the right of petition, or deny trial by jury, or quarter soldiers in time

of peace, or compel a man to be a witness against himself, or deprive him of life, liberty or property without due process of law, or take his property for public use without just compensation. These and other restraints upon the powers of the government are most of them of the very essence of liberty itself. The experience of mankind had shown that the exercise of these powers had been attended by oppression. And the framers of our Constitution determined that the government they were forming should be incapable of perpetrating such wrongs. The dictum of Francis Lieber well portrays our system that we do not enjoy liberty by grace of government but by limitations upon its powers.

In addition to the express restraints to which I have referred, there are others of a different but of an effective character. The division of government into coordinate and independent branches imposes a check upon hasty action and protects the individual against the expression of sudden impulse and passion and of that transient sentiment which is public opinion in the making. The operation of this restraint against hasty action is in the direction of safety and justice. If it did nothing else it would put obstacles in the way of the economic quack who would administer his extemporized cures in overdoses and would give

some protection against the readiness of political surgeons to risk capital operations.

Our system provides a set of checks and balances which make it as a rule difficult to secure a decision in advance of the formation of a genuine public opinion, and if it sometimes happens, as it doubtless does, that reforms of questionable importance do not have sufficient vitality to overcome the friction of our governmental machinery, and reforms of first importance sometimes require advertising of the obstreperous sort in order to secure the settled kind of popular expression necessary to final action, yet while we move slowly, no nation in the world has moved more safely or more steadily in the right direction. We take few important steps, at least in our domestic policies, which are necessary to be retraced. So much can hardly be said of the policies which depend chiefly upon executive action or upon the operation of the treaty-making power, and which may be adopted in a moment by the executive and the Senate and do not usually have to run the gauntlet of public opinion. Through the operation of that power we have seen the country placed in the twinkling of an eye in antagonism to its most cherished institutions and to policies of fundamental importance. I might refer for an illustration to the Treaty of Paris of 1898, which pro-

foundly affected our military problem, converting the Pacific from a bulwark of defence into an obstacle over which we must pass to maintain our possessions. It required us also, in defiance of that right of self-government in communities which was the basis of our Declaration of Independence, to govern vassal nations, and it put us in a position so inconsistent with our Monroe Doctrine as to be in direct antagonism to it. In such an instance there is only the slightest suggestion of popular government, because the people knew nothing about it until it had been finally done, and their agents knew nothing about it before they were elected. Government by treaty, however, is likely to have sway only at rare intervals. The normal operation of the legislative department of our government requires the concurrence of the majority of the House of Representatives elected directly by the people and for short terms, and of the Senate made up of members chosen by the states for long terms, with the opportunity to the President either to sign or to veto measures, and with the laws as finally passed to be construed in the light of the Constitution by the justices of the Supreme Court. The system is admirably devised for securing the mature expression of public opinion and for protecting the social order against outbursts of transient passion. If mistakes are

made they must at least be made with deliberation. Thus it will be seen that Mr. Arnold's discourse upon numbers to which I have referred and which was uttered as a criticism upon our system was in effect a justification of an important feature of the American Constitution.

It is sometimes urged that, if a people cannot at any given moment do what it wishes to do, it does not enjoy self-government. But I imagine it is with peoples as with men. A man may act under the impulse of a mighty wrath and do something for which he will be sorry all the rest of his life. Would he not more truly and more profitably govern himself if he were forced to take a little of the time consumed in repentance in getting himself under control and in thinking before he acted?

At first sight there would appear to be a lack of unity with the severe separation of the executive and law making departments each habited in a splendid isolation. The President at one end of the avenue sends a coldly constitutional message to the Congress, which is politely referred to committees and which may or may not be acted upon. On the other hand the Congress laboriously passes a bill which it may deem to be a measure of vast consequence and after due consideration the President may approve or may send a veto message setting forth the reasons for his disapproval. In

a sense the President and Congress each occupies a fortified camp and they approach each other from the outside in an attitude of distrust and ready at a moment's notice for the opening of hostilities. Messengers pass to and fro sometimes with the white flag and occasionally with the black one and much language is consumed in the various forms of communication.

The tie that binds more closely than any other is found in the offices of which the President is the gracious dispenser and the Congressmen or their constituents, the more or less ungrateful recipients. It must be admitted that our statesmen are somewhat truncated affairs on account of the Constitutional distribution of functions. In the typical parliamentary system, the minister responsible for the foreign policy of his country or any other part of its government produces his program upon the floor of parliament and the leaders of the opposition meet him, and then and there a fight to the finish occurs which determines the fate of the ministry. The ruling minister may show that he is great in debate and great in action. If he is weak in either he may fail. With us a statesman may be supremely great in both qualities, but they must appear tandem and he has no chance to exhibit them both at the same time. He may at one period of his

career show himself to be a great lawmaker in Congress, and at another period a great executive, but the two exhibitions cannot come off simultaneously. This lack of the centering and concentration of action upon the stage takes much from the dramatic interest of governing in our country. It is the steady pressure, the trench fighting rather than the stirring charge. But in the government of a great democracy pressure is apt to produce better results than the charge. The former implies a more settled opinion and less of instability than the latter. Government may be less diverting but it is likely to be more safe, and as against such a result the unrealized aspirations of greatness upon the part of deserving statesmen are not to be regarded. For the practical purpose of unity our system works very well. In fact there are many who think it works too well and that the executive is encroaching upon the constitutional powers of the legislature. The development of the office of Speaker has produced results that appear somewhat paradoxical. Chosen by the membership of the House to preside over its deliberations, he had come to be the political leader of the only great organ of our national government whose members were chosen directly by the people, and he acquired an authority which made him a central figure in government and con-

spicuous enough to serve in some degree as a balance against the power of the President. At the same time, as leader of the House, his influence with it was such as to be of much value in securing its cooperation upon those administrative policies with which he agreed. He was thus able to promote a measure of the unity that belongs to the cabinet system.

There is another feature of the American system which tends to safeguard self-government. I refer to the right of the states to control their own local affairs and to the division of the powers of government so that they are exercised by two governments rather than one. We have thus escaped the spectacle of an enormously great government, engorged with every power, which would cause the ordinary citizen to shrivel up and shrink to the dimensions of a dwarf. I do not know where before the creation of our government there could be found such another double allegiance, where two governments divided between them the exercise of sovereign powers over the same territory at the same time. There have been instances where there was an inferior and subject government, the powers of which were delegated by the imperial State, but under our system the Nation and the State each possesses its own powers, and each derives them from the

same source. The makers of our Constitution sought to do away with the chaos which held sway after the Revolution under the government of the Confederation, but they took care to avoid the opposite extreme of a highly centralized government. James Wilson feared that the national government would be made so weak that it would be devoured by the states. But neither he nor those associated with him desired that it should be so powerful that the states should be devoured by it. They aimed to steer the middle course and establish a safe balance equally designed to guard against both disunion and a centralized autocracy. Now that slavery has been destroyed and the Union compacted and firmly established, the central government has nothing to fear from the states. But the unifying forces of electricity and steam which tend so strongly to centralize trade and commerce tend also to overthrow the constitutional balance and to reduce the states to mere shadows of government.

The states are ideally constituted to deal with the great mass of questions relating to the personal relations of men with each other. They do not possess the war power and as they can have no foreign policies, a very important cause of governmental infatuation and dangerous ambition is taken away. They deal especially with the

commonplace but vital concerns of everyday life. The people feel a practical responsibility for their local government, they see that its affairs are really their own, and they acquire a practical and vital interest in government and deal with it through their senses and reason instead of through their imagination. For this very reason, perhaps, real self-government where people actually deal with the problems that confront them is less diverting than government by a distant and powerful organism in which the share of each individual is infinitesimal at the most. Facts are not only stubborn things but they are usually commonplace and unattractive things. The political upholsterer of the Spectator was the type of large numbers of men. They love to dream and to compose in their own minds the difficulties of distant kingdoms and empires rather than to order the affairs of their own households. It is far easier for them to call upon some distant deity than it is devoutly to work out their own salvation. The distant government can produce the stage effects and the tableaux necessary to make the appeal to the imagination. These devices serve to distract attention from the common things which are often of very vital importance. The difficulty and even the impossibility of seeing the essential facts which the citizen as the governing

unit should consider will inevitably result in corruption and misgovernment. If men are really to govern they can obviously govern better where they can see things with the eye than where they see them only with the fancy.

We may understand better the philosophy of our system of government divided between national and state agencies if we look across the sea to that continent whose cities and plains and mountain tops are now being swept over by a most appalling conflagration. Europe has an area substantially equal to our own. It possesses a not greatly different diversity of climate and soil. No one can fail to comprehend at this moment how beneficial a certain central union might be to prevent those nations from fighting each other, and to conduct a few general imperial concerns. The advantage of a United States of Europe has suggested itself to every mind. But it is beyond comprehension that such a union could stand a single week without the largest measure of home rule. It is impossible to imagine that it would be consistent with the happiness or even the peace or the liberty of those people that that vast region should be governed in all things from a central point like Vienna or Berlin and that the same code of municipal law should apply to all men whomsoever they might be, those who dwell upon the

slopes of the Caucasus or of the Pyrenees and those who inhabit the Hebrides or the islands of the Ægean. There is a great variety of races, but it is by no means a question of race alone. Differences of climate and soil will produce different interests, different habits and tastes, and different ambitions. That great area is too vast in this era of the development of mankind to be comprehended in a single community of thought. Laws that would be beneficial to one portion would be resented by another as a galling infraction upon liberty. Representative government in any true sense would be impossible. It would at the best upon most questions be a compromise between conflicting interests with nobody getting what he really wanted. However free in form government might be, the part each citizen would play in it would be so nominal that the sense of individual responsibility would be gone, and there would be a system destructive of political liberty and repressive of the genius of the people. Such a government would cover a detail and mass of jurisdiction beyond the possibility of supervision and close scrutiny by any single governmental unit, and the best that could be hoped for would be a government by bureaus. The history of government by bureaus shows that it begins by being autocratic and ends by being corrupt. Great Britain affords

us an illustration of unwise centralization and after a century of trial, marked by unrest, by contention and even by violence, is now granting home rule to Ireland.

The distant and comprehensive view of conditions in Europe serves to emphasize the wisdom of the architects of our Constitution so far as the federal system is concerned. It brings clearly to mind the evils of rigidity and the necessity of free play between the different parts of so enormous a mechanism in order to avert an intolerable strain. They were establishing a system of government which was destined to have sway over a larger area than that of Europe and over a population that would be likely some day to be as numerous. They ordained a clear-cut union for purposes of peace and war and for a few other great central concerns, and they just as clearly reserved all the other powers of government to the states and to the people. They did this in the interest of the common peace, to secure the stability of their system, to promote real self-government and to establish more than a nominal and a transient liberty.

It is commonly urged against the Constitution that it is antiquated and was devised for social conditions that have now been superseded. That it is

intensely modern in its philosophy, so far as the division of governmental power is concerned, is illustrated, I think, by the reference I have made to conditions in Europe; and as our population increases, the advantage and even the necessity of home rule will increase also. The objection on the score of antiquity must therefore be urged against the character of its powers rather than against its general frame. We are told that we are living in a new world and cannot adequately be governed by a paper Constitution written more than a century ago. Methods of transportation have been revolutionized. We have the telegraph and the telephone. Electricity as a force has come under the dominion of man and it is often generated in one state and transmitted for use to another. How can it be that a constitutional system, devised when these and similar marvels were wholly unknown should not be antiquated and outgrown? These very illustrations, however, are not particularly fortunate for the purpose for which they were made. Showing as they do in the strongest possible way the contrast between that time and our own, they also show the wonderful adaptability of the Constitution to modern conditions. The regulation of commerce between the states whether by railway or air ships is as amply covered by the Constitution as was the traffic by oxen one hun-

dred and twenty-five years ago. Although the only member of the Constitutional convention with any important knowledge of electricity was Benjamin Franklin, and he probably never dreamed of its utilization as a power to serve the marvellous uses of the present time, yet it can be made the subject of taxation, if brought into the country from abroad, or its transmission from state to state or its use in interstate commerce can be regulated precisely as well as if the framers of the Constitution had known all that is now known about it and had adopted a special article relating to it alone.

There would seem to be little ground for the imputation of weakness against a constitutional power so ample and comprehensive as to support the Sherman anti-trust law, an enactment the depth of which the courts have failed to sound during twenty-five years of litigation, and the various laws relating to the regulation of the railways, the telephone and the telegraph.

The developments of more than a century have shown few if any gaps in constitutional power, but no one contends that amendments should not be adopted from time to time as the Constitution itself provides. Some changes have been made and doubtless others will follow as their necessity shall appear. As an instance, the development of our

industrial system makes the diversity of state labor laws peculiarly harmful. This diversity is apt to produce strikes and lockouts, and the state which restricts its hours of labor and in other respects enacts liberal labor laws is at a disadvantage with the state that does not. Uniformity of legislation with regard to hours of labor and the working of children would improve conditions greatly. But amendments of such a character would not at all impair the scheme of the Constitution. As to the general scope and structure of the Constitution, the growth of a century has served to accentuate its wisdom. The desire to change or disregard its terms does not spring out of any new thing. It has its origin in an impatience at restraint in a swiftly moving time when restraint was never needed more. It betrays a spirit of reaction which would change the fashion of government and revert to a type of democracy too unstable to cope with the conditions even of ancient times.

There are states in the Union far ahead of their sisters in intelligence and public spirit. Those states press forward and enact laws with regard to labor, education, the use of money in elections and upon similar subjects which become models for the other states, and are after a time generally adopted throughout the country. If it were necessary in order to inaugurate reforms, instead of

appealing to the sentiment of one of the intelligent states, to educate the whole country, to lift up the whole mass, the delay to forward movements would be very great, and the legislation when it should be finally adopted could not be framed upon systems which had already been put in operation and had served as experiments on which improvements might be grafted.

It is easy to cite instances of the passage of vicious laws and of the vicious execution of good laws both at Washington and in the State capitals. But the most potent agency to secure honest official conduct whether by the Washington or the State governments is the sleepless vigilance of the people. That vigilance cannot be exercised if the people cannot see what is being done. This vigilance is not only beneficial to the government: it is a very good thing for the people aside from the benefit they derive from an improved government. It was the discipline gained from supervising the details of government that led the historian Freeman in comparing small states with great ones to say that "the small republic develops all the faculties of individual citizens to the highest pitch. The average citizen of such a state is a superior being to the average citizen of a large kingdom. He ranks not with its average subjects, but at the very least with its average legislators."

In the case of the government of a great state, the citizen is likely to be a mere spectator; in the case of a small one he is likely to be an actor. Where a spectator looks at things that are done in the far distance, the thing that stages well is the thing that will command his attention. Where the governmental agencies are at a great distance, the opportunity for deception is great, the chance for detection small, and bad government will inevitably come. The ideal condition is that provided by our constitutional system. We have the protection, the security and the sense of national pride afforded by a great nation, and at the same time we may enjoy a large measure of individual freedom and manage those things most vital to good government which are in our own neighborhoods, without the intermeddling of an autocrat. It is a marvel that a system which has produced on the whole results in happiness and prosperity for which we shall vainly search history for a parallel should stand in danger of being repudiated.

Thus, our institutions, state and national, have shown themselves admirably adapted to secure individual liberty, especially through those restraints upon the action of government found in the direct prohibitions of the Constitution or made necessary by the deliberate procedure which it imposes. The happy influence of these restraints

has been augmented by the distribution and decentralization of the powers of government. The President also has often been a restraining force and has given an opportunity for the second thought. Our great presidents, like Washington and Lincoln, have in important crises kept themselves behind and not in front of the people, just as the general who is really a soldier directs the movements of his armies from the rear instead of impetuously waving his sword at the front.

But the people must respect their own liberties, for no Constitution, however perfect, can save a people from itself. It may serve as a mighty dyke sufficient for a time to hold in check the rising tides of tyranny in its many forms, but it will be certain to be swept away by the settled habit of thought and the persistent pressure of the public opinion of a nation. It is important that such opinion should be as free as the Constitution itself. The wise and venerable Franklin in almost the last words spoken in the convention when the final step was being taken in the adoption of the Constitution gave an illuminating answer to this riddle of our system. "It can," he said, speaking of the Constitution, "only end in despotism as other forms have done before it when the people shall be so corrupted as to need despotic government, being incapable of any other." And if recourse

is had to the despotic government of which Franklin spoke, there is little to choose between the agencies by which it is ordinarily exercised. Indeed there will sometimes be a humane and benevolent despotism under the sway of an individual tyrant. But a rigid despotism enforced by a people over the individuals of which it is composed is likely to show neither benevolence nor humanity.

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